

# ***NORTH CAROLINA REGISTER***

**VOLUME 38 • ISSUE 07 • Pages 367 – 469**

**October 2, 2023**

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**PUBLISHED BY**

*The Office of Administrative Hearings  
Rules Division  
1711 New Hope Church Road  
Raleigh, NC 27609  
Telephone 984-236-1850  
Fax 984-236-1947*

*Donald R. van der Vaart, Director  
Ashley B. Snyder, Codifier of Rules  
Dana McGhee, Publications Coordinator  
Cathy Matthews-Thayer, Editorial Assistant  
Julie B. Eddins, Register Drafter*

## Contact List for Rulemaking Questions or Concerns

For questions or concerns regarding the Administrative Procedure Act or any of its components, consult with the agencies below. The bolded headings are typical issues which the given agency can address but are not inclusive.

### **Rule Notices, Filings, Register, Deadlines, Copies of Proposed Rules, etc.**

Office of Administrative Hearings

Rules Division

1711 New Hope Church Road

984-236-1850

Raleigh, North Carolina 27609

984-236-1947 FAX

contact: Ashley B. Snyder, Codifier of Rules

ashley.snyder@oah.nc.gov

984-236-1941

Dana McGhee, Publications Coordinator

dana.mcghee@oah.nc.gov

984-236-1937

Cathy Matthews-Thayer, Editorial Assistant

cathy.thayer@oah.nc.gov

984-236-1901

### **Rule Review and Legal Issues**

Rules Review Commission

1711 New Hope Church Road

984-236-1850

Raleigh, North Carolina 27609

984-236-1947 FAX

contact: Brian Liebman, Commission Counsel

brian.liebman@oah.nc.gov

984-236-1948

Lawrence Duke, Commission Counsel

lawrence.duke@oah.nc.gov

984-236-1938

William W. Peaslee, Commission Counsel

bill.peaslee@oah.nc.gov

984-236-1939

Seth M. Ascher, Commission Counsel

seth.ascher@oah.nc.gov

984-236-1934

Alexander Burgos, Paralegal

alexander.burgos@oah.nc.gov

984-236-1940

Julie B. Eddins, Administrative Assistant

julie.eddins@oah.nc.gov

984-236-1935

### **Fiscal Notes & Economic Analysis**

Office of State Budget and Management

116 West Jones Street

Raleigh, North Carolina 27603-8005

Contact: Julie Ventaloro, Economic Analyst

osbmruleanalysis@osbm.nc.gov

984-236-0694

NC Association of County Commissioners

919-715-2893

215 North Dawson Street

Raleigh, North Carolina 27603

contact: Amy Bason

amy.bason@ncacc.org

NC League of Municipalities

919-715-2925

424 Fayetteville Street, Suite 1900

Raleigh, North Carolina 27601

contact: Monica Jackson

mjackson@nclm.org

### **Legislative Process Concerning Rulemaking**

545 Legislative Office Building

300 North Salisbury Street

919-733-2578

Raleigh, North Carolina 27611

919-715-5460 FAX

Jason Moran-Bates, Staff Attorney

Chris Saunders, Staff Attorney

Aaron McGlothlin, Staff Attorney

**NORTH CAROLINA REGISTER**  
Publication Schedule for January 2023 – December 2023

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	RRC Meeting Date	Earliest Eff. Date of Permanent Rule	270 <sup>th</sup> day from publication in the Register
37:13	01/03/23	12/07/22	01/18/23	03/06/23	03/20/23	04/20/2023	05/01/23	09/30/23
37:14	01/17/23	12/20/22	02/01/23	03/20/23	04/20/23	05/18/2023	06/01/23	10/14/23
37:15	02/01/23	01/10/23	02/16/23	04/03/23	04/20/23	05/18/2023	06/01/23	10/29/23
37:16	02/15/23	01/25/23	03/02/23	04/17/23	04/20/23	05/18/2023	06/01/23	11/12/23
37:17	03/01/23	02/08/23	03/16/23	05/01/23	05/20/23	06/15/2023	07/01/23	11/26/23
37:18	03/15/23	02/22/23	03/30/23	05/15/23	05/20/23	06/15/2023	07/01/23	12/10/23
37:19	04/03/23	03/13/23	04/18/23	06/02/23	06/20/23	07/20/2023	08/01/23	12/29/23
37:20	04/17/23	03/24/23	05/02/23	06/16/23	06/20/23	07/20/2023	08/01/23	01/12/24
37:21	05/01/23	04/10/23	05/16/23	06/30/23	07/20/23	08/17/2023	09/01/23	01/26/24
37:22	05/15/23	04/24/23	05/30/23	07/14/23	07/20/23	08/17/2023	09/01/23	02/09/24
37:23	06/01/23	05/10/23	06/16/23	07/31/23	08/20/23	09/21/2023	10/01/23	02/26/24
37:24	06/15/23	05/24/23	06/30/23	08/14/23	08/20/23	09/21/2023	10/01/23	03/11/24
38:01	07/03/23	06/12/23	07/18/23	09/01/23	09/20/23	10/19/2023	11/01/23	03/29/24
38:02	07/17/23	06/23/23	08/01/23	09/15/23	09/20/23	10/19/2023	11/01/23	04/12/24
38:03	08/01/23	07/11/23	08/16/23	10/02/23	10/20/23	11/16/2023	12/01/23	04/27/24
38:04	08/15/23	07/25/23	08/30/23	10/16/23	10/20/23	11/16/2023	12/01/23	05/11/24
38:05	09/01/23	08/11/23	09/16/23	10/31/23	11/20/23	12/14/2023	01/01/24	05/28/24
38:06	09/15/23	08/24/23	09/30/23	11/14/23	11/20/23	12/14/2023	01/01/24	06/11/24
38:07	10/02/23	09/11/23	10/17/23	12/01/23	12/20/23	01/18/2024	02/01/24	06/28/24
38:08	10/16/23	09/25/23	10/31/23	12/15/23	12/20/23	01/18/2024	02/01/24	07/12/24
38:09	11/01/23	10/11/23	11/16/23	01/02/24	01/20/24	02/15/2024	03/01/24	07/28/24
38:10	11/15/23	10/24/23	11/30/23	01/16/24	01/20/24	02/15/2024	03/01/24	08/11/24
38:11	12/01/23	11/07/23	12/16/23	01/30/24	02/20/24	03/21/2024	04/01/24	08/27/24
38:12	12/15/23	11/22/23	12/30/23	02/13/24	02/20/24	03/21/2024	04/01/24	09/10/24

This document is prepared by the Office of Administrative Hearings as a public service and is not to be deemed binding or controlling.

## EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

### GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) text of proposed rules;
- (3) text of permanent rules approved by the Rules Review Commission;
- (4) emergency rules
- (5) Executive Orders of the Governor;
- (6) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H; and
- (7) other information the Codifier of Rules determines to be helpful to the public.

**COMPUTING TIME:** In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

### FILING DEADLINES

**ISSUE DATE:** The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

**LAST DAY FOR FILING:** The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

### NOTICE OF TEXT

**EARLIEST DATE FOR PUBLIC HEARING:** The hearing date shall be at least 15 days after the date a notice of the hearing is published.

**END OF REQUIRED COMMENT PERIOD**  
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

**DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION:** The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.





# State of North Carolina

**ROY COOPER**  
GOVERNOR

August 28, 2023

## EXECUTIVE ORDER NO. 284

### DECLARATION OF A STATEWIDE STATE OF EMERGENCY AND TEMPORARY WAIVER AND SUSPENSION OF MOTOR VEHICLE REGULATIONS

**WHEREAS**, Tropical Storm Idalia (“Idalia”) will likely cause significant impacts to the State of North Carolina and the southeastern United States; and

**WHEREAS**, Idalia could have a significant impact on public and private property and could seriously disrupt essential utility services and systems; and

**WHEREAS**, the anticipated impacts from Idalia constitute a state of emergency as defined in N.C. Gen. Stat. §§ 166A-19.3(6) and 166A-19.3(20); and

**WHEREAS**, certain measures are necessary to ensure the protection and safety of North Carolina residents and to coordinate the emergency response among state and local entities and officials; and

**WHEREAS**, N.C. Gen. Stat. § 166A-19.1(3) provides that it is the responsibility of the undersigned, state agencies, and local governments to “provide for the rapid and orderly rehabilitation of persons and restoration of property”; and

**WHEREAS**, N.C. Gen. Stat. § 166A-19.1(4) provides that it is the responsibility of the undersigned, state agencies, and local governments to “provide for cooperation and coordination of activities relating to emergency mitigation preparedness, response, and recovery among agencies and officials of this state and with similar agencies and officials of other states and with other private and quasi-official organizations”; and

**WHEREAS**, N.C. Gen. Stat. §§ 166A-19.10 and 166A-19.20 authorize the undersigned to declare a state of emergency and exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

**WHEREAS**, Idalia will create a statewide emergency area, as that term is defined in the Emergency Management Act to mean an “emergency applicable to two-thirds or more of the counties in North Carolina”; and

**WHEREAS**, N.C. Gen. Stat. § 166A-19.10(3) authorizes the undersigned to delegate any gubernatorial authority vested in him under the Emergency Management Act, and to provide for the subdelegation of that authority; and

**WHEREAS**, under N.C. Gen. Stat. § 166A-19.30(b)(3) the undersigned, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

**WHEREAS**, under N.C. Gen. Stat. § 166A-19.30(b)(4), the undersigned, with the concurrence of the Council of State, may waive a provision of any regulation or ordinance of a state agency which restricts the immediate relief of human suffering; and

**WHEREAS**, the anticipated impacts from Idalia may result in extensive damage, including widespread power outages throughout the state that will require vehicles bearing equipment and supplies for utility restoration and debris removal to move through North Carolina on the interstate and intrastate highways; and

**WHEREAS**, the uninterrupted supply of electricity, fuel oil, diesel oil, gasoline, kerosene, propane, liquid petroleum gas, food, water, and medical supplies to residential and commercial establishments is essential before, during, and after Idalia, and any interruption in the delivery of those commodities threatens the public welfare; and

**WHEREAS**, the prompt restoration of utility services is essential to the safety and well-being of the state's residents; and

**WHEREAS**, the undersigned has found that residents may suffer losses and further widespread damage within the meaning of N.C. Gen. Stat. §§ 166A-19.3 and 166A-19.21(b); and

**WHEREAS**, 49 C.F.R. § 390.23 allows the Governor of a State to suspend the rules and regulations under 49 C.F.R. Part 390 if the Governor determines that an emergency condition exists; and

**WHEREAS**, nothing contained in this declaration shall be construed as an exemption from the controlled substances and alcohol use and testing requirements (49 C.F.R. Part 382), the commercial driver's license requirements (49 C.F.R. Part 383), the financial responsibility (insurance) requirements (49 C.F.R. Part 387), operating authority (49 C.F.R. Part 365), applicable size and weight requirements, ill or fatigued operator (49 C.F.R. § 392.3) or any other portion of the regulations not specifically identified; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 166A-19.70(g), upon the recommendation of the North Carolina Commissioner of Agriculture and the existence of an imminent threat of severe economic loss of livestock, poultry or crops ready to be harvested, the undersigned shall direct the North Carolina Department of Public Safety ("DPS") to temporarily suspend weighing vehicles used to transport livestock, poultry or crops ready to be harvested; and

**WHEREAS**, this suspension does not permit the gross weight of any vehicle or combination to exceed the safe load carrying capacity established by the North Carolina Department of Transportation ("DOT") on any bridge pursuant to N.C. Gen. Stat. § 136-72, or to permit the operation of a vehicle when a law enforcement officer has probable cause to believe the vehicle is creating an imminent hazard to public safety; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 166A-19.70(b), the Governor may declare that the health, safety, or economic well-being of persons or property requires that the maximum hours of service for drivers prescribed by N.C. Gen. Stat. § 20-381 should be waived for (1) persons transporting essential fuels, food, water, non-alcoholic beverages, medical supplies, feed for livestock and poultry, (2) persons transporting livestock, poultry, and crops ready to be harvested and (3) vehicles used in the restoration of utility and transportation services; and

**WHEREAS**, the undersigned has sought and obtained concurrence from the Council of State, as that term is defined in N.C. Gen. Stat. 19.3(2d), on the provisions of this Executive Order requiring concurrence; and

**WHEREAS**, the undersigned has documented the contact and response of each Council of State member and has released the concurrence, non-concurrence, or non-response of each member by position on the website in which this Executive Order is published.

**NOW, THEREFORE**, pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED:**

**Section 1.**

I hereby declare that a statewide state of emergency, as defined in N.C. Gen. Stat. §§ 166A-19.3(6) and 166A-19.3(20), exists in the State of North Carolina due to the anticipated impacts from Idalia.

For purposes of this Executive Order, the emergency area is the entire State of North Carolina (“the Emergency Area”).

**Section 2.**

I order all state and local government entities and agencies to cooperate in the implementation of the provisions of this declaration and the provisions of the North Carolina Emergency Operations Plan (“the Plan”).

**Section 3.**

I delegate to Eddie M. Buffalo, Jr., the Secretary of the North Carolina Department of Public Safety (“DPS”), or his designee, all power and authority granted to and required of me by Article 1A of Chapter 166A of the North Carolina General Statutes for the purpose of implementing the Plan and deploying the State Emergency Response Team to take the appropriate actions necessary to promote and secure the safety and protection of the populace in North Carolina.

Secretary Buffalo, as Chief Coordinating Officer for the State of North Carolina, shall exercise the powers prescribed in N.C. Gen. Stat. § 143B-602.

I further direct Secretary Buffalo, or his designee, to seek assistance from any and all agencies of the United States Government as may be needed to meet the emergency and to seek reimbursement for costs incurred by the state in responding to this emergency.

**Section 4.**

DPS, in conjunction with the North Carolina Department of Transportation (“DOT”), shall waive the maximum hours of service for drivers prescribed by DPS pursuant to N.C. Gen. Stat. § 20-381 for (1) persons transporting essential fuels, food, water, non-alcoholic beverages, medical supplies, feed for livestock and poultry, (2) persons transporting livestock, poultry, and crops ready to be harvested and (3) vehicles used in the restoration of utility and transportation services. In addition, DPS shall, pursuant to N.C. Gen. Stat. § 166A-19.70(g), temporarily suspend weighing, pursuant to N.C. Gen. Stat. § 20-118.1, those vehicles used to transport livestock, poultry, livestock or poultry feed, or crops ready to be harvested.

**Section 5.**

Subject to Section 6 below, DPS, in conjunction with DOT, shall waive enforcement of certain size and weight restrictions and penalties arising under N.C. Gen. Stat. §§ 20-116, 20-118, and 20-119, certain registration requirements and penalties arising under N.C. Gen. Stat. §§ 20-86.1 and 20-382, and certain registration and filing requirements and penalties arising under N.C. Gen. Stat. §§ 105-449.45, 105-449.47, and 105-449.49 for vehicles supporting emergency relief efforts in the Emergency Area.

**Section 6.**

Notwithstanding the waivers set forth above, size and weight restrictions and penalties have not been waived under the following conditions:

- a. When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer (“GVWR”) or 90,000 pounds gross weight, whichever is less.
- b. When the vehicle weight exceeds a single-axle weight of 22,000 pounds, a tandem-axle weight of 42,000 pounds, or a gross weight of 90,000 pounds.
- c. When the vehicle consists of a five or more axle combination vehicle that exceeds a single-axle weight of 26,000 pounds, a tandem-axle weight of 42,000 pounds and a gross weight 90,000 pounds, with a length of at least forty-eight (48) feet between the center of axle one and the center of the last axle of the vehicle and a minimum of eleven (11) feet between the center of axle one and the center of axle two of the vehicle.

- d. When the vehicle consists of a two-axle vehicle that exceeds a gross weight of 37,000 pounds and a single-axle weight of no more than 27,000 pounds, with a length of at least fourteen (14) feet between the center of axle one and the center of axle two of the vehicle.
- e. When a vehicle and vehicle combination exceed twelve (12) feet in width and the total overall vehicle combination's length exceeds seventy-five (75) feet from bumper to bumper.
- f. Vehicles and vehicle combinations subject to exemptions or permits by authority of this Executive Order shall not be exempt from the requirement of having (A) a yellow banner on the front and rear that is seven (7) feet long and eighteen (18) inches wide and bears the legend "Oversized Load" in ten (10) inch black letters, 1.5 inches wide and (B) red flags measuring eighteen (18) inches square on all sides at the widest point of the load. In addition, when operating between sunset and sunrise, a certified escort shall be required for loads exceeding eight (8) feet six (6) inches in width.
- g. Commercial vehicles operating outside the normal weight, height, and length restrictions under the authority of this State of Emergency shall be issued permits by DOT. Said vehicles shall be subject to any special conditions DOT and DPS may list on applicable permits. Nothing in this Executive Order shall be construed to allow any vehicle to exceed weight limits posted for bridges and like structures, nor shall anything in this Executive Order be construed to relieve compliance with restrictions other than those specified in this Executive Order or from any statute, rule, order, or other legal requirement not specifically waived herein.
- h. Oversize permits may be issued by the DOT, Oversize/Overweight Unit, during normal business hours, Monday through Friday by calling 1-888-221-8166 or contacting them through the online portal at <https://connect.ncdot.gov/business/trucking/Pages/overpermits.aspx>

**Section 7.**

Vehicles referenced under Sections 5 and 6 of this Executive Order shall be exempt from the following registration requirements, except where otherwise noted below:

- a. The requirement to obtain a temporary trip permit in N.C. Gen. Stat. § 105-449.49.
- b. The requirement of filing a quarterly fuel tax return.
- c. The registration requirements under N.C. Gen. Stat. §§ 20-382.1 and 20-382 concerning interstate for-hire authority; however, vehicles shall maintain the required limits of insurance as required.
- d. Non-participants in North Carolina's International Registration Plan and International Fuel Tax Agreement will be permitted to enter North Carolina in accordance with the exemptions identified by this Executive Order.

**Section 8.**

The size and weight exemption for vehicles will be allowed on all DOT designated routes, except those routes designated as light traffic roads under N.C. Gen. Stat. § 20-118. Size and weight exemptions shall not be in effect on bridges posted pursuant to N.C. Gen. Stat. § 136-72.

**Section 9.**

The North Carolina State Highway Patrol shall enforce the conditions set forth in this Executive Order in a manner that does not endanger North Carolina motorists.

**Section 10.**

Pursuant to 49 C.F.R. § 390.23, I hereby waive 49 C.F.R. § 395.3 for vehicles transporting loads that are for use in (1) providing direct assistance supporting emergency relief efforts including transporting essential fuels, food, water, non-alcoholic beverages, medical supplies, feed for livestock

and poultry, (2) transporting livestock, poultry, and crops ready to be harvested, or (3) the restoration of utility and transportation services in response to Idalia in North Carolina and affected states.

Upon request by law enforcement officers, exempted vehicles must produce documentation sufficient to establish that their loads are for use in providing direct assistance supporting emergency relief efforts including transporting loads that are for use in (1) providing direct assistance supporting emergency relief efforts including transporting essential fuels, food, water, non-alcoholic beverages, medical supplies, feed for livestock and poultry, (2) transporting livestock, poultry, and crops ready to be harvested, or (3) the restoration of utility and transportation services in response to Idalia.

Direct assistance terminates when a driver or commercial motor vehicle is used in intrastate/interstate commerce to transport cargo or provide services that are not in support of emergency relief efforts related to Idalia in North Carolina or affected states, or when the motor carrier dispatches a driver or commercial motor vehicle to another location to begin operations in commerce. (49 C.F.R. § 390.23(b)).

Upon termination of direct assistance to emergency relief efforts related to transporting loads that are for use in (1) providing direct assistance supporting emergency relief efforts including transporting essential fuels, food, water, non-alcoholic beverages, medical supplies, feed for livestock and poultry, (2) transporting livestock, poultry, and crops ready to be harvested, or (3) the restoration of utility and transportation services in response to Idalia in North Carolina or affected states, the motor carrier and driver are subject to the requirements of 49 C.F.R. § 395.3, except that a driver may return empty to the motor carrier's terminal or the driver's normal work reporting location without complying with 49 C.F.R. § 395.3. When a driver is moving from emergency relief efforts to normal operations a 10-hour break is required if the total time a driver operated, whether conducting emergency relief efforts or a combination of emergency relief efforts and normal operations, equals or exceeds fourteen (14) hours.

**Section 11.**

This Executive Order does not prohibit or restrict lawfully possessed firearms or ammunition or impose any limitation on the consumption, transportation, sale, or purchase of alcoholic beverages.

**Section 12.**

Pursuant to N.C. Gen. Stat. § 166A-19.23, this declaration triggers the prohibition against excessive pricing as provided in N.C. Gen. Stat. §§ 75-37 and 75-38 in the Emergency Area.

**Section 13.**

This Executive Order is effective immediately and shall remain in effect for thirty (30) days, unless earlier terminated.

**IN WITNESS WHEREOF**, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 28<sup>th</sup> day of August in the year of our Lord two thousand and twenty-three.

Roy Cooper  
Governor

**ATTEST:**

Rodney S. Maddox  
Chief Deputy Secretary of State





# State of North Carolina

**ROY COOPER**  
GOVERNOR

September 1, 2023

## EXECUTIVE ORDER NO. 285

### DISASTER DECLARATION FOR THE CITY OF ROCKY MOUNT IN NASH AND EDGEcombe COUNTIES

**WHEREAS**, the North Carolina Emergency Management Act, Chapter 166A of the North Carolina General Statutes, authorizes the issuance of a disaster declaration for an emergency area as defined in N.C. Gen. Stat. § 166A-19.3(7) that has been impacted by a Type I disaster as defined in N.C. Gen. Stat. § 166A-19.21(b); and

**WHEREAS**, on July 19, 2023, the City of Rocky Mount (hereinafter “Rocky Mount”) in Nash and Edgecombe Counties, North Carolina experienced damage from an EF-3 tornado; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 166A-19.22, the Mayor of Rocky Mount in Nash and Edgecombe Counties, North Carolina declared a state of emergency on July 20, 2023, and

**WHEREAS**, due to the impacts of the events, local and state emergency management officials conducted a joint preliminary damage assessment on July 20-21, 2023, for Rocky Mount; and

**WHEREAS**, Rocky Mount has incurred more than \$10,000 in disaster-related damages, the damages exceed one (1) percent of the City’s operating budget, Rocky Mount has a current state approved Hazard Mitigation plan in place and participates in the National Flood Insurance Program; and

**WHEREAS**, the President of the United States has not declared a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (hereinafter “Stafford Act”), as amended (42 U.S.C. § 5121-5206), declaration; and

**WHEREAS**, Rocky Mount would not qualify based on the preliminary damage assessment for Federal Public Assistance according to the requirements of 44 C.F.R. § 206.48; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 166A-19.21(a)-(b), the criteria for a Type I disaster are met if: (a) the Secretary of the North Carolina Department of Public Safety has provided a preliminary damage assessment to the undersigned and the General Assembly; (b) local state of emergency declarations have been issued pursuant to N.C. Gen. Stat. § 166A-19.22 in the areas impacted by the Type I disaster; (c) the preliminary damage assessment meets or exceeds the State infrastructure criteria set out in N.C. Gen. Stat. § 166A-19.41(b)(2)a; and (d) a major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared for Public Assistance; and

**WHEREAS**, the undersigned has determined that a Type I disaster, as defined in N.C. Gen. Stat. § 166A-19.21(b)(1), exists in the State of North Carolina in the City of Rocky Mount in Nash and Edgecombe Counties; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.41, if a disaster is declared, the undersigned may make state funds available for emergency assistance in the form of individual assistance and public assistance for recovery from those disasters for which federal assistance under the Stafford Act is either not available or does not adequately meet the needs of residents in the emergency area.

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, IT IS ORDERED:

**Section 1.**

For purposes of this Executive Order only, the emergency area as defined in N.C. Gen. Stat. § 166A-19.3(7), is the City of Rocky Mount in Nash and Edgecombe Counties, North Carolina (“the Emergency Area”).

**Section 2.**

Pursuant to N.C. Gen. Stat. § 166A-19.21(b)(1), a Type I disaster is hereby declared for the Emergency Area.

**Section 3.**

I authorize state disaster assistance in the form of public assistance grants to the eligible local governments located within the emergency area that meet the terms and conditions under N.C. Gen. Stat. § 166A-19.41(b)(2). The public assistance grants are for the following:

- a. Debris clearance.
- b. Emergency protective measures.

**Section 4.**

I hereby order that this declaration be (a) distributed to the news media and other organizations calculated to bring its contents to the attention of the public; (b) promptly filed with the Secretary of the North Carolina Department of Public Safety, the North Carolina Secretary of State, and the Clerks of Superior Court in the Nash and Edgecombe Counties; and (c) distributed to others as necessary to ensure proper implementation of this declaration.

**Section 5.**

Pursuant to N.C. Gen. Stat. § 166A-19.21(c)(1), this Type I disaster declaration shall expire sixty (60) days after issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of thirty (30) days each, not to exceed a total of 120 days from the date of first issuance.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 1<sup>st</sup> day of September in the year of our Lord two thousand and twenty-three.

Roy Cooper  
Governor

ATTEST:

Rodney S. Maddox  
Chief Deputy Secretary of State





# State of North Carolina

**ROY COOPER**  
GOVERNOR

September 1, 2023

EXECUTIVE ORDER NO. 286

## DISASTER DECLARATION FOR THE CITY OF NEWTON IN CATAWBA COUNTY

**WHEREAS**, the North Carolina Emergency Management Act, Chapter 166A of the North Carolina General Statutes, authorizes the issuance of a disaster declaration for an emergency area as defined in N.C. Gen. Stat. § 166A-19.3(7) that has been impacted by a Type I disaster as defined in N.C. Gen. Stat. § 166A-19.21(b); and

**WHEREAS**, on August 7, 2023, the City of Newton (hereinafter “Newton”) in Catawba County, North Carolina experienced damages from a straight-line wind event; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 166A-19.22 the Mayor of Newton in Catawba County, North Carolina declared a state of emergency on August 7, 2023; and

**WHEREAS**, due to the impacts of the event, local and state emergency management officials conducted a joint preliminary damage assessment on August 8-9, 2023, for Newton; and

**WHEREAS**, Newton has incurred more than \$10,000 in disaster-related damages, the damages exceed one (1) percent of the City’s operating budget, Newton has a current state approved Hazard Mitigation plan in place and participates in the National Flood Insurance Program; and

**WHEREAS**, the President of the United States has not declared a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (hereinafter “Stafford Act”), as amended (42 U.S.C. § 5121-5206), declaration; and

**WHEREAS**, Newton would not qualify based on the preliminary damage assessment for Federal Public Assistance according to the requirements of 44 C.F.R. § 206.48; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 166A-19.21(a)-(b), the criteria for a Type I disaster are met if: (a) the Secretary of the North Carolina Department of Public Safety has provided a preliminary damage assessment to the undersigned and the General Assembly; (b) local state of emergency declarations have been issued pursuant to N.C. Gen. Stat. § 166A-19.22 in the areas impacted by the Type I disaster; (c) the preliminary damage assessment meets or exceeds the State infrastructure criteria set out in N.C. Gen. Stat. § 166A-19.41(b)(2)a; and (d) a major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared for Public Assistance; and

**WHEREAS**, the undersigned has determined that a Type I disaster, as defined in N.C. Gen. Stat. § 166A-19.21(b)(1), exists in the State of North Carolina in the City of Newton in Catawba County; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.41, if a disaster is declared, the undersigned may make state funds available for emergency assistance in the form of individual assistance and public assistance for recovery from those disasters for which federal assistance under the Stafford Act is either not available or does not adequately meet the needs of residents in the emergency area.

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, IT IS ORDERED:

**Section 1.**

For purposes of this Executive Order only, the emergency area as defined in N.C. Gen. Stat. § 166A-19.3(7), is the City of Newton in Catawba County, North Carolina ("the Emergency Area").

**Section 2.**

Pursuant to N.C. Gen. Stat. § 166A-19.21(b)(1), a Type I disaster is hereby declared for the Emergency Area.

**Section 3.**

I authorize state disaster assistance in the form of public assistance grants to the eligible local governments located within the emergency area that meet the terms and conditions under N.C. Gen. Stat. § 166A-19.41(b)(2). The public assistance grants are for the following:

- a. Debris clearance.
- b. Emergency protective measures.

**Section 4.**

I hereby order that this declaration be (a) distributed to the news media and other organizations calculated to bring its contents to the attention of the public; (b) promptly filed with the Secretary of the North Carolina Department of Public Safety, the North Carolina Secretary of State, and the Clerk of Superior Court in the Catawba County; and (c) distributed to others as necessary to ensure proper implementation of this declaration.

**Section 5.**

Pursuant to N.C. Gen. Stat. § 166A-19.21(c)(1), this Type I disaster declaration shall expire sixty (60) days after issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of thirty (30) days each, not to exceed a total of 120 days from the date of first issuance.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 1<sup>st</sup> day of September in the year of our Lord two thousand and twenty-three.

*Roy Cooper*

Roy Cooper  
Governor

ATTEST:

*Rodney A. Maddox*

Rodney A. Maddox  
Chief Deputy Secretary of State



North Carolina License and Theft Bureau

PUBLIC NOTICE

This serves as a notice pursuant to G.S. § 20-288 of a license application submission by a manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative that has not been previously issued a license by the Division.

Applicant's Name: Braun Industries Inc

Applicant's Address: 1170 Production Dr, Van Wert OH 45891

Application Date: August 23, 2023

Names and titles of any individual listed on the application as an owner, partner, member or officer of the applicant:

Kimberly L Braun - President

Alain Brunelle – Executive VP

Sylvain Levesque- VP

North Carolina License and Theft Bureau

PUBLIC NOTICE

This serves as a notice pursuant to G.S. § 20-288 of a license application submission by a manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative that has not been previously issued a license by the Division.

Applicant's Name: Braxton Creek RV, LLC

Applicant's Address: 0925 North State Road 5

Application Date: 08/26/2023

Names and titles of any individual listed on the application as an owner, partner, member or officer of the applicant: Jason Bontrager - CEO, Austin Bontrager - COO

North Carolina License and Theft Bureau

PUBLIC NOTICE

This serves as a notice pursuant to G.S. § 20-288 of a license application submission by a manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative that has not been previously issued a license by the Division.

Applicant's Name: Cenntro Automotive Corporation

Applicant's Address: 501 Okserson Rd Freehold, NJ 07728

Application Date: 08/26/2023

Names and titles of any individual listed on the application as an owner, partner, member or officer of the applicant: Peter Z. Wang - CEO President, Tony W. Tsai – Vice President Corporate Affairs Secretary

North Carolina License and Theft Bureau

PUBLIC NOTICE

This serves as a notice pursuant to G.S. § 20-288 of a license application submission by a manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative that has not been previously issued a license by the Division.

Applicant's Name: Textron Specialized Vehicles Inc

Applicant's Address: 1451 Marvin Griffin Rd GA, 30906

Application Date: 08/26/2023

Names and titles of any individual listed on the application as an owner, partner, member or officer of the applicant: Maryellen Williams – Contract Administrator

**The ~~2023~~2024 Low-Income Housing Tax Credit Qualified Allocation Plan  
For the State of North Carolina**

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I. INTRODUCTION

The ~~2023~~2024 Qualified Allocation Plan (the Plan) has been developed by the North Carolina Housing Finance Agency (the Agency) as administrative agent for the North Carolina Federal Tax Reform Allocation Committee (the Committee) in compliance with Section 42 of the Internal Revenue Code of 1986, as amended (the Code). For purposes of the Plan, the term “Agency” shall mean the Agency acting on behalf of the Committee, unless otherwise provided.

The Plan was reviewed in one public hearing and met the other legal requirements prior to final adoption by the Committee. The staff of the Agency was present at the hearing to take comments and answer questions.

The Agency will only allocate low-income housing tax credits in compliance with the Plan. The Code requires the Plan contain certain elements. These elements, and others added by the Committee, are listed below.

- A. Selection criteria to be used in determining the allocation of tax credits:
- Project location and site suitability.
  - Market demand and local housing needs.
  - Serving the lowest income tenants.
  - Serving qualified tenants for the longest periods.
  - Design and quality of construction.
  - Financial structure and long-term viability.
  - Use of federal project-based rental assistance.
  - Use of mortgage subsidies.
  - Experience of development team and management agent(s).
  - Serving persons with disabilities and persons who are homeless.
  - Willingness to solicit referrals from public housing waiting lists.
  - Tenant populations of individuals with children.
  - Projects intended for eventual tenant ownership.
  - Projects that are part of a community redevelopment effort.
  - Energy efficiency.
  - Historic nature of the buildings.
- B. Threshold, underwriting and process requirements.
- C. Description of the Agency’s compliance monitoring program, including procedures to notify the Internal Revenue Service of noncompliance with the requirements of the program.

In the process of administering the tax credit, Rental Production Program (RPP) and Workforce Housing Loan Program (WHLP), the Agency will make decisions and interpretations regarding project applications and the Plan. RPP and WHLP are state investments dedicated to making rental developments financially feasible and more affordable for working families and seniors. Unless otherwise stated, the Agency is entitled to the full discretion allowed by law in making all such decisions and interpretations. The Agency reserves the right to amend, modify, or withdraw provisions contained in the Plan that are inconsistent or in conflict with state or federal laws or regulations. In the event of a major:

- natural disaster
- pandemic / epidemic,
- disruption in the financial markets, or
- reduction in subsidy resources available, including tax credits, RPP, and WHLP funding,

the Agency may disregard any section of the Plan, including point scoring and evaluation criteria, that interferes with an appropriate response.

**II. SET-ASIDES, AWARD LIMITATIONS, AND COUNTY DESIGNATIONS**

The Agency will determine whether applications are eligible under Section II(A) or II(B). This Section II only applies to 9% Tax Credit applications.

**A. REHABILITATION SET-ASIDE**

The Agency will award up to ten percent (10%) of tax credits available after forward commitments to projects proposing rehabilitation of existing housing. The Agency may exceed this limitation to completely fund a project request. In the event eligible requests exceed the amount available, the Agency will determine awards based on the evaluation criteria in Section IV(H)(3). The maximum award under this set-aside to any one Principal will be one project.

The following will be considered new construction under Section II(B) below:

- adaptive re-use projects,
- entirely vacant residential buildings,
- proposals to increase and/or substantially re-configure residential units.

**B. NEW CONSTRUCTION SET-ASIDES**

**1. GEOGRAPHIC REGIONS**

The Agency will award tax credits remaining after awards described above to new construction projects, starting with those earning the highest scoring totals within each of the following four geographic set-asides and continuing in descending score order through the last project that can be fully funded. The Agency reserves the right to revise the available credits in each set-aside to award the next highest scoring application statewide under Section II(G)(1).

West 16%		Central 23%		Metro 38%	East 23%	
Alexander	Lincoln	Alamance	Moore	Buncombe	Beaufort	Jones
Alleghany	Macon	Anson	Orange	Cumberland	Bertie	Lenoir
Ashe	Madison	Cabarrus	Person	Durham	Bladen	Martin
Avery	McDowell	Caswell	Randolph	Forsyth	Brunswick	Nash
Burke	Mitchell	Chatham	Richmond	Guilford	Camden	New Hanover
Caldwell	Polk	Davidson	Rockingham	Mecklenburg	Carteret	Northampton
Catawba	Rutherford	Davie	Rowan	Wake	Chowan	Onslow
Cherokee	Surry	Franklin	Scotland		Columbus	Pamlico
Clay	Swain	Granville	Stanly		Craven	Pasquotank
Cleveland	Transylvania	Harnett	Stokes		Currituck	Pender
Gaston	Watauga	Hoke	Union		Dare	Perquimans
Graham	Wilkes	Iredell	Vance		Duplin	Pitt
Haywood	Yadkin	Lee	Warren		Edgecombe	Robeson
Henderson	Yancey	Montgomery			Gates	Sampson
Jackson					Greene	Tyrrell
					Halifax	Washington
					Hertford	Wayne
					Hyde	Wilson
					Johnston	

**2. REDEVELOPMENT PROJECTS**

- (a) If necessary, the Agency will adjust the awards under the Plan to ensure the overall allocation results in awards for two (2) Redevelopment Projects. Specifically, tax credits that would have been awarded to the lowest ranking project(s) that do(es) not meet the criteria below will be

awarded to the next highest ranking Redevelopment Project(s). The Agency may make such adjustment(s) in any geographic set-aside.

- (b) The following are required to qualify as a Redevelopment Project:
- (i) The site currently contains or contained at least one structure used for commercial, residential, educational, or governmental purposes.
  - (ii) The application proposes adaptive re-use with historic rehabilitation credits and/or new construction.
  - (iii) Any required demolition has been completed or is scheduled for completion in ~~2023~~2024 (not including the project buildings). For a Rental Assistance Demonstration (RAD) project under the U.S. Department of Housing and Urban Development (HUD), any required demolition must be scheduled to be completed by June 30, ~~2024~~2025.
  - (iv) A unit of local government initiated the project, evidenced by a Request for Proposal, Council minutes, or other documentation stipulating the project was originally envisioned by the local government, and has invested community development resources in the Half Mile area within the last ten years. A resolution will not suffice as evidence of local government initiation.
  - (v) As of the preliminary application deadline, a unit of local government formally adopted a plan to address the deterioration (if any) in the Half Mile area and approved one or more of the following for the project:
    - donation of at least one parcel of land,
    - waiver of impact, tap, or related fees normally charged,
    - commitment to lend/grant at least \$750,000 in the Metro region and \$250,000 in the East, Central or West of its housing development funds (net of any amount paid to the unit of government) as a source of permanent funding, or
    - is part of the RAD program under HUD.

The Agency will require official documentation of each element of local government participation.

C. USDA RURAL DEVELOPMENT

Up to \$750,000 will be awarded to ~~one~~ eligible rehabilitation ~~and/or new construction~~ project(s) with existing U.S. Department of Agriculture, Rural Development (RD) Section 515 financing and project-based rental assistance for at least fifty percent (50%) of the units. ~~These~~ projects will count towards the applicable set-asides and limits. ~~The maximum award under this set-aside to any one Principal will be one project.~~ Other RD applications will be considered under the applicable set-asides.

D. NONPROFIT AND CHDO SET-ASIDES, NATIONAL HOUSING TRUST FUND, AND CHOICE NEIGHBORHOODS IMPLEMENTATION SET-ASIDE

1. SET-ASIDES AND NATIONAL HOUSING TRUST FUND

If necessary, the Agency will adjust the awards under the Plan to ensure that the overall allocation results in:

- ten percent (10%) of the state's federal tax credit ceiling being awarded to projects involving tax-exempt organizations (nonprofits),
- fifteen percent (15%) of the Agency's HOME funds being awarded to projects involving Community Housing Development Organizations certified by the Agency (CHDOs) and
- all funds available from the National Housing Trust Fund have been awarded.

Specifically, tax credits that would have been awarded to the lowest ranking project(s) that do(es) not fall into one of these categories will be awarded to the next highest ranking project(s) that do(es) until the overall allocation(s) reach(es) the necessary percentage(s). The Agency may make such adjustment(s) in any set-aside.

(a) Nonprofit Set-Aside

To qualify as a nonprofit application, the project must either:

- not involve any for-profit Principals or
- comply with the material participation requirements of the Code, applicable federal regulations and Section VI(A)(2).

(b) CHDO Set-Aside

To qualify as a CHDO application,

- the project must meet the requirements of subsection (D)(1)(a) above and 24 CFR 92.300(a)(1),
- the Applicant, any Principal, or any affiliate must not undertake any choice-limiting activity prior to successful completion of the U.S. Department of Housing and Urban Development (HUD) environmental clearance review, and
- the project and owner must comply with regulations regarding the federal CHDO set-aside.

The Agency may determine the requirements of the federal CHDO set-aside have been or will be met without implementing subsection (D)(1)(b).

(c) National Housing Trust Fund

To qualify for the National Housing Trust Fund, the project must:

- ~~be located in a High Income county as designated in Section II(F)(2) and~~
- commit at least twenty-five percent (25%) of qualified low-income units will be affordable to and occupied by households with incomes at or below thirty percent (30%) of area median income. See Appendix J for additional information.

2. CHOICE NEIGHBORHOODS IMPLEMENTATION SET-ASIDE

~~The Agency will award one (1) new construction project not to exceed \$1,000,000 which contains Choice Neighborhoods Implementation (CNI) funds, as determined by the Agency. The Agency will make a forward commitment of 2025 tax credits for no more than two applications, and no more than one application per housing authority, provided such applications meet all Plan requirements and are not awarded through the regular competition. To be eligible under this set-aside the Agency must have approved the application for submission under this set-aside prior to the preliminary application submission deadline. Any Public Housing Authority involved in more than one application containing CNI funds will be required to indicate their priority project. Tax credits under this section II(D) will be taken from the total available after allocation to the Rehabilitation set-aside but prior to allocations under the New Construction set-aside. An award under this section II(D) will not count towards any county award limits described in section F(1) below. This set-aside will remain in each QAP through 2025.~~

E. PRINCIPAL AND PROJECT AWARD LIMITS

1. PRINCIPAL LIMITS

- (a) The maximum awards to any one Principal will be a total of \$2,000,000 in tax credits, including all set-asides. New construction awards will be counted towards this limitation first (in score order), then rehabilitation awards. No Principal can receive more than 2 new construction awards.
- (b) The Agency may further limit awards based on unforeseen circumstances.

(c) For purposes of the maximum allowed in this subsection (E)(1), the Agency may determine that a person or entity not included in an application is a Principal for the project. Such determination would include consideration of relationships between the parties in previously awarded projects and other common interests. Standard fee for service contract relationships (such as accountants or attorneys) will not be considered.

2. PROJECT LIMIT

The maximum award to any one project will be \$1,200,000.

3. AGENCY-DESIGNATED BASIS BOOST

The Agency can boost the eligible basis of new construction projects committing to the targeting in Section IV(B)(2) or that are located in an Opportunity Zone by up to ten percent (10%). Projects using the DDA or QCT basis increase are not eligible under this section.

F. COUNTY AWARD LIMITS AND INCOME DESIGNATIONS

1. AWARD LIMITS

(a) Rehabilitation and East, Central, and West Regions

No county will be awarded more than one project under the rehabilitation set-aside. No county will be awarded more than one project under the new construction set-aside

(b) Metro Region

The initial maximum award(s) for a county will be its percent share of the Metro region based on population (see **Appendix K**), unless exceeding this amount is necessary to complete a project request. If any tax credits remain, the Agency will make awards to the next highest scoring application(s). A county may receive one additional award, even if in excess of its share.

2. INCOME DESIGNATIONS

The Agency is responsible for designating each county as High, Moderate or Low Income. The criteria used as a guide in making this determination was HUD's FY ~~2022~~2023 Median Family Income.

High		Moderate		Low	
Buncombe	Iredell	Alamance	Macon	Alleghany	Lenoir
Brunswick	Johnston	Alexander	Mitchell	Anson	Martin
Cabarrus	Lincoln	Beaufort	<del>Montgomery</del>	Ashe	McDowell
<del>Camden</del>	Madison	Burke	Nash	Avery	<u>Montgomery</u>
<del>Carteret</del>	Mecklenburg	Caldwell	Onslow	Bertie	Northampton
Chatham	Moore	<u>Camden</u>	Pamlico	Bladen	Richmond
Currituck	New Hanover	<u>Carteret</u>	Pasquotank	Cherokee	Robeson
Dare	Orange	Caswell	Perquimans	Chowan	<del>Rockingham</del>
Durham	Pender	Catawba	Person	Clay	Rutherford
Franklin	Union	Craven	Pitt	Cleveland	Sampson
Gaston	Wake	Cumberland	Polk	Columbus	Scotland
Henderson	Watauga	<del>Davidson</del>	Randolph	Duplin	<u>Surry</u>
		<u>Davidson</u>	<u>Rockingham</u>	Graham	<del>Swain</del>
		Edgecombe	Rowan	<u>Greene</u>	Tyrrell
		Forsyth	Stanly	Halifax	Vance
		Gates	Stokes	Hertford	Warren
		Granville	<del>Surry</del>	Hyde	Washington
		<u>Greene</u>	<u>Swain</u>	Jones	<u>Wilkes</u>

Guilford	Transylvania	<u>Wilson</u>
Harnett	<u>Wayne</u>	<del>Wayne</del>
Haywood	<del>Wilkes</del>	
Hoke	<del>Wilson</del>	
Jackson	Yadkin	
<u>Jones</u>	Yancey	
Lee		

G. OTHER AWARDS AND RETURNED ALLOCATIONS

1. The Agency may award tax credits remaining from the geographic set-asides to the next highest scoring eligible new construction application(s) in the East, Central, and West regions and/or one or more eligible rehabilitation applications. The Agency may also carry forward any amount of tax credits to the next year.
2. An owner who received an award of 9% tax credits in 2021 or 2022 ~~2020 or 2021~~ is eligible to receive an allocation of ~~2023~~2024 tax credits equal to or less than the amount of the original tax credits awarded to the project. The Owner must request an allocation of ~~2023~~2024 credits between November 1, ~~2022~~2023 and December 31, ~~2022~~2023. The allocation will not count against the ~~2023~~2024 Principal limit.

The following will apply to those owners requesting a new tax credit allocation:

- Owners will return their allocation for an allocation of ~~2023~~2024 tax credits.
  - Projects must comply with the requirements in the Qualified Allocation Plan for the original allocation and all representations made in the original awarded application (unless otherwise waived by the Agency).
  - the project's design is the same as approved at full application (other than changes approved by the Agency).
  - Projects seeking additional credits will need to re-apply in the ~~2023~~2024 cycle.
3. The Agency may make a forward commitment of the next year's tax credits in an amount necessary to fully fund project(s) with a partial award or to any project application that was submitted in a prior year if such application meets all the minimum requirements of the Plan. In the event that credits are returned or the state receives credits from the national pool, the Agency may elect to carry such credits forward, make an award to any project application (subject only to the nonprofit set aside), or a combination of both.

III. DEADLINES, APPLICATION AND FEES

A. APPLICATION AND AWARD SCHEDULE

The following schedule will apply to the ~~2023~~2024 application process for 9% Tax Credits and the first round of tax-exempt bond volume and 4% Tax Credits.

- January ~~19~~20 Deadline for submission of preliminary applications (12:00 noon)
- March ~~11~~3 Market analysts will submit studies to the Agency and Applicants
- March ~~22~~4 Notification of final site scores

~~March 22~~ ~~April 3~~ — Deadline for market-related project revisions (5:00 p.m.)

April ~~5~~<sup>10</sup> Deadline for the Agency and Applicant to receive the revised market study, if applicable

May ~~10~~<sup>2</sup> Deadline for full applications (12:00 noon)

August Notification of tax credit awards

The Agency will also accept tax-exempt bond volume and 4% Tax Credit applications any time between May 1 and ~~October 1~~ ~~September 29~~<sup>0</sup> (5:00 p.m.). When a preliminary application has been submitted in this timeframe, a schedule of milestones will be provided to the Applicant. The preliminary application submission date will determine when those milestones occur which will follow a time frame similar to the 9% Tax Credit round. The Agency will work with the Applicant to determine if the project will receive ~~2023~~<sup>2024</sup> or ~~2024~~<sup>2025</sup> volume cap. Full applications can be submitted no later than January ~~10~~<sup>2</sup>, ~~2024~~<sup>2025</sup>.

The Agency reserves the right to change the schedule to accommodate unforeseen circumstances.

B. APPLICATION, ALLOCATION, MONITORING, AND PENALTY FEES

1. All Applicants are required to pay a nonrefundable fee of \$6,1~~6~~<sup>4</sup>0 at the submission of the preliminary application. This fee covers the cost of the market study or physical needs assessment and a \$1,4~~6~~<sup>4</sup>0 preliminary application processing fee (which will be assessed for every electronic application submitted). The Agency may charge additional fee(s) to cover the cost of direct contracting with other providers (such as appraisers).
2. All Applicants are required to pay a nonrefundable processing fee of \$1,4~~6~~<sup>4</sup>0 upon submission of the full application.
3. Entities receiving tax credit awards, including those involving tax-exempt bond volume, are required to pay a nonrefundable allocation fee equal to 0.9~~2~~<sup>0</sup>% of the project's total qualified basis.
4. The allocation fee will be due at the time of either the carryover allocation or bond volume award. Failure to return the required documentation and fee by the date specified may result in cancellation of the allocation. The Agency may assess other fees for additional monitoring responsibilities.
5. Owners must pay a monitoring fee of \$1,2~~8~~<sup>6</sup>0 per unit (includes all units, qualified, unrestricted, and employee) prior to issuance of the project's IRS Form 8609. Any project utilizing income averaging or for which the Agency is the bond issuer must pay an additional monitoring fee of \$300 per unit.
6. If expenses for legal services are incurred by the Committee or Agency to correct mistakes of the owner which jeopardize use of the tax credits, such legal costs will be paid by the owner in the amount charged to the Committee or Agency.
7. -The Agency may assess Applicants or owners a fee of up to \$2,000 for each instance of failure to comply with a written requirement, whether or not such requirement is in the Plan. The Agency will not process applications or other documentation relating to any Principal who has an outstanding balance of fees owed; such a delay in processing may result in disqualification of application(s).

C. APPLICATION PROCESS AND REQUIREMENTS

1. The Agency may require Applicants to submit any information, letter, or representation relating to Plan requirements or point scoring as part of the application process.
2. Any failure to comply with an Agency request under subsection (C)(1) above or any misrepresentation, false information or omission in any application document may result in disqualification of that application and any other involving the same owner(s), Principal(s),

consultant(s) and/or application preparer(s). Any misrepresentation, false information or omission in the application document may also result in a revocation of a tax credit allocation.

3. Only one active application can be submitted per site (new construction or rehabilitation).
4. For any rehabilitation application proposing to combine multiple existing properties into one property, the properties must be adjacent or not separated by more than one like parcel, or by more than a road, street, stream, or other similar property..
5. No Principal or Applicant can be in the ownership entity of more than five (5) new construction 9% Tax Credit preliminary or full applications.
6. The Agency will notify the appropriate unit of government about the project after submission of the full application.
7. For each application one individual or validly existing entity must be identified as the Applicant and execute the preliminary and full applications. An entity may be one of the following:
  - (a) corporation, including nonprofits,
  - (b) limited partnership, or
  - (c) limited liability company.

Only the identified Applicant will have the ability to make decisions with regard to that application and be considered under Section IV(D)(1). The Applicant may enter into joint venture or other agreements but the Agency will not be responsible for evaluating those documents to determine the relative rights of the parties. If the application receives an award the Applicant must become a managing member or general partner of the ownership entity.

#### IV. SELECTION CRITERIA AND THRESHOLD REQUIREMENTS

Applications must meet all applicable threshold requirements to be considered for award and funding. Scoring and threshold determinations made in prior years are not binding on the Agency for the ~~2022~~2024 cycle.

##### A. SITE AND MARKET EVALUATION

The Agency will not accept a full application where the preliminary application does not meet all site and market threshold requirements.

##### 1. SITE EVALUATION (MAXIMUM ~~6860~~ POINTS)

- (a) General Site Requirements:
  - (i) Sites must be sized to accommodate the number and type of units proposed. The Applicant or a Principal must have site control by the preliminary application deadline as evidenced by an option, contract or deed. The documentation of site control must include a plot plan.
  - (ii) Required zoning must be in place by the full application deadline, including special/conditional use permits, and any other discretionary land use approval required (includes all legislative or quasi-judicial decisions).
  - (iii) Water and sewer must be available with adequate capacity to serve the site. Sites should be accessed directly by existing paved, publicly maintained roads. If not, it will be the owner's responsibility to extend utilities and roads to the site. In such cases, the Applicant must explain and budget for such plans and document the right to perform such work.

(iv) To be eligible for RPP funds, the preliminary application must contain the Agency’s “Notice of Real Property Acquisition” form. The form must be executed by all parties before or at the same time as the option or contract.

(b) Criteria for Site Score Evaluation:

Site scores will be based on the following factors. Each will also serve as a threshold requirement; the Agency may remove an application from consideration if the site is sufficiently inadequate in one of the categories. An application must have a minimum total score of 50~~45~~ points.

(i) NEIGHBORHOOD CHARACTERISTICS (MAXIMUM 10 POINTS)

Good: 10 points if structures within a Half Mile are well maintained or the site qualifies as a Redevelopment Project (see Section II(B)(2)(b))

Fair: 5 points if structures within a Half Mile are not well maintained and there are visible signs of deterioration

Poor: 0 points if structures within a Half Mile are Blighted or have physical security modifications (e.g. barbed wire fencing or bars on windows)

Half Mile: The half mile radius from the approximate center of the site (does not apply to Amenities below).

Blighted: A structure that is abandoned, deteriorated substantially beyond normal wear and tear, a public nuisance, or appears to violate minimum health and safety standards.

(ii) AMENITIES (MAXIMUM ~~38~~46 POINTS)

Other than applications with tribally-appropriated funds or near bus/transit stops (described at the end of this subsection), points will be determined according to the matrix below. For an amenity to be eligible for points, the application must include documentation required by the Agency of meeting the applicable criteria. In all cases the establishment must be open to the general public and operating as of the preliminary application deadline with no announced closing prior to the notification of final site scores.

Driving Distance in Miles

<i>Primary Amenities</i> <i>(maximum 26 points)</i>	≤ 1.5	≤ 2	≤ 2.5	≤ 3.5
Grocery	12 pts.	10 pts.	8 pts.	6 pts.
Shopping	7 pts.	6 pts.	5 pts.	4 pts.
Pharmacy	7 pts.	6 pts.	5 pts.	4 pts.
<i>Secondary Amenities</i> <i>(maximum <del>20</del><u>2</u> points)</i>	≤ 1.5	≤ 2	≤ 2.5	≤ 3.5
Other Primary Amenity	5 pts.	4 pts.	3 pts.	2 pts.
Service	3 pts.	2 pts.	1 pt.	0 pts.
Healthcare	3 pts.	2 pts.	1 pt.	0 pts.
Public Facility	3 pts.	2 pts.	1 pt.	0 pts.
Public School (Family)	3 pts.	2 pts.	1 pt.	0 pts.
Senior Center (Senior)	3 pts.	2 pts.	1 pt.	0 pts.
Retail	3 pts.	2 pts.	1 pt.	0 pts.

Driving Distance in Miles, Small Town\*

<i>Primary Amenities</i> <i>(maximum 26 points)</i>	≤ 2.5	≤ 3	≤ 3.5	≤ 4.5
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Grocery	12 pts.	10 pts.	8 pts.	6 pts.
Shopping	7 pts.	6 pts.	5 pts.	4 pts.
Pharmacy	7 pts.	6 pts.	5 pts.	4 pts.
<i>Secondary Amenities</i>				
(maximum 20+2 points)	≤ 2.5	≤ 3.	≤ 3.5	≤ 4.5
Other Primary Amenity	5 pts.	4 pts.	3 pts.	2 pts.
Service	3 pts.	2 pts.	1 pt.	0 pts.
Healthcare	3 pts.	2 pts.	1 pt.	0 pts.
Public Facility	3 pts.	2 pts.	1 pt.	0 pts.
Public School (Family)	3 pts.	2 pts.	1 pt.	0 pts.
Senior Center (Senior)	3 pts.	2 pts.	1 pt.	0 pts.
Retail	3 pts.	2 pts.	1 pt.	0 pts.

\* A Small Town is a municipality with a population of less than 10,000 people. The list of town sizes can be found on the Office of State Budget and Management web site at <https://demography.osbm.nc.gov/explore/dataset/2021-certified-population-estimates/table/?disjunctive.county&disjunctive.municipality&sort=county>. The Certified 2021 Population Estimates, Municipal Estimates – Alphabetically by municipality will be used to determine a town’s population. For municipalities listed in multiple counties, the combined population will be used. A site is not required to be within the town limits to qualify but must have an address of a Small Town. Any application in an unincorporated town not appearing on the Small Town list but recognized as a community must have Agency approval to be considered a Small Town prior to the preliminary application deadline.

Only one establishment will count for each row under Primary and Secondary Amenities. For example, an application for a site with a public park, library, and community center all between one point five (1.5) miles and two (2) miles will receive only 2 points under Public Facility.

The driving distance will be the mileage as calculated by Google Maps and must be a drivable route as of the preliminary application deadline. The drivable route must be shown in satellite view map format (written directions optional). A photo of each amenity must also be provided. The measurement will be:

- the point closest to the site entrance to or from
- the point closest to the amenity entrance.

Driveways, access easements, and other distances in excess of 500 feet between the nearest residential building of the proposed project and road shown on Google Maps will be included in the driving distance. For scattered site projects, the measurement will be from the location with the longest driving distance(s). Scattered site is defined as buildings on separate parcels, not connected by internal drive, and with separate entrances. A scattered site cannot have parcels separated by more than one like parcel, or by more than a road, street, stream, or other similar property.

The following establishments qualify as a Grocery:

Aldi	Galaxy Food Centers	Lowes Foods	Walmart Neighborhood Market
Bi-Lo	The Fresh Market	Piggly Wiggly	Walmart Supercenter
Bo’s Food Stores	Harris Teeter	Publix	Weaver Street Market
Compare Foods	Hopey & Company	Red & White	Wegmans
Earth Fare	IGA	Sav-Mor	Whole Foods
Fairvalue	Ingle’s Market	Save-A-Lot	

Family Foods	Just Save	Sprouts
Food Lion	Kroger	Super Target
Food Matters Market	Lidl	Trader Joe's

The following establishments qualify as Shopping:

Big Lots	Maxway	Super Target
Dollar General	Ollie's Bargain Outlet	Walmart
Dollar Tree	Roses	Walmart Supercenter
Family Dollar	Roses Express	
Fred's Super Dollar	Target	

To qualify as a Pharmacy, the establishment must have non-medical general merchandise items for sale (not including pharmacies within hospitals).

To qualify as a Secondary Amenity, the establishment must meet the applicable requirement(s) below.

Other Primary Amenity: second Grocery, Shopping or Pharmacy (not used as Primary Amenity)

Service: restaurant, bank/credit union, or gas station with convenience store

Healthcare: hospital, urgent care business, general/family practice, or general dentist (not to include orthodontist); does not include medical specialists or clinics within pharmacies

Public Facility (any of the following):

- community center with scheduled activities operated by a local government
- public park owned and maintained by a local government containing, at a minimum, playground equipment and/or walking/bike trails and listed on a map, website, or other official means; a greenway or trailhead does not qualify
- library operated by a local government open at least five days a week

Public School: non-alternative elementary, middle or high school (family properties only)

Senior Center: with scheduled activities operated by a local government (senior properties only)

Retail: any Grocery or Shopping not listed as a Primary or Other Primary Amenity; any strip shopping center with a minimum of 4 operating establishments; any grocery or general merchandise establishment

A commitment of at least \$250,000 in tribally-appropriated funds (including through the Native American Housing Assistance and Self Determination Act) qualifies for 6 points, not to exceed the total for subsection (ii). The commitment must meet the requirements of Section VI(B)(6)(b) and be submitted as part of the preliminary application.

A bus/transit stop qualifies for 6 points, not to exceed the total for subsection (ii), if it is:

- in service as of the preliminary application date,
- at a fixed location and has a covered waiting area,
- served by a public transportation system six days a week, including for 10 consecutive hours on weekdays, and
- within 0.25 miles walking distance of the proposed project site entrance using existing continuous sidewalks (excluding the proposed project site) and crosswalks.

A bus/transit stop qualifies for 2 points, not to exceed the total for subsection (ii), if all of the above criteria are met except for a covered waiting area.

(iii) SITE SUITABILITY (MAXIMUM 12 POINTS)

3 points if there is no Incompatible Use, which includes the following activities, conditions, or uses within the distance ranges specified:

Half Mile

- airports
- chemical or hazardous materials storage/disposal
- industrial or agricultural activities with environmental concerns (such as odors or pollution)
- commercial junk or salvage yards
- landfills currently in operation
- sources of excessive noise
- wastewater treatment facilities

A parcel or right of way within 500 feet containing any of the following:

- adult entertainment establishment
- distribution facility
- factory or similar operation
- jail or prison
- large swamp

Any of the following within 250 feet of a proposed project building:

- electrical utility substation, whether active or not
- frequently used railroad tracks (not to include passenger light rail)
- high traffic corridor (500 feet for an interstate)
- power transmission lines and tower

3 points if there are no negative features, design challenges, physical barriers, or other unusual and problematic circumstances that would impede project construction or adversely affect future tenants, including but not limited to: power transmission lines and towers, flood hazards, steep slopes, large boulders, ravines, year-round streams, wetlands, and other similar features (for adaptive re-use projects: suitability for residential use and difficulties posed by the building(s), such as limited parking, environmental problems or the need for excessive demolition)

3 points if the project would be visible to potential tenants using normal travel patterns and is within 500 feet of a building that is currently in use for residential, commercial, educational, or governmental purposes (excluding Blighted structures or Incompatible Uses)

3 points if traffic controls allow for safe access to the site; for example limited sight distance (blind curve) or having to cross three or more lanes of traffic going the same direction when exiting the site would not receive points.

(iv) SITE NEGATIVE POINTS (NEGATIVE 3 POINTS)

Up to 3 points will be deducted from a site deemed to be unsuitable for housing. This determination recognizes a site may meet all site evaluation scoring criteria but not be suitable for housing regardless of having required zoning or local government support.

2. MARKET ANALYSIS

The Agency will administer the market study process based on this Section and the terms of **Appendix A** (incorporated herein by reference).

- (a) The Agency will contract directly with market analysts to perform studies. Applicants may interact with market analysts and will have an opportunity to revise their project (unit mix,

targeting). Any revisions must be submitted in writing to both the market analyst and to the Agency, following the schedule in Section III(A), and will be binding on the Applicant for the full application.

- (b) The Agency will limit the number of projects awarded in the same application round to those that it determines can be supported in the market.
- (c) The following four criteria are threshold requirements for new construction applications:
  - (i) the project's capture rate,
  - (ii) the project's absorption rate,
  - (iii) the vacancy rate at comparable properties (what qualifies as a comparable will vary based on the circumstances), and
  - (iv) the project's effect on existing or awarded properties with 9% Tax Credits or Agency loans.
- (d) Applicants may not increase the total number of units after submission of the preliminary application. Unless ~~2023~~2024 rent and income limits are released by the 9% preliminary application deadline, ~~2022~~2023 rent and income limits must be used for the preliminary application, market study, and any market study revision. After the deadline for completing market-related project revisions Applicants may not increase:
  - (i) rents, irrespective of a decrease in utility allowances,
  - (ii) the number of income targeted units in any bedroom type, or
  - (iii) the number of units in any bedroom type.
- (e) The Agency is not bound by the conclusions or recommendations of the market analyst(s), and will use its discretion in evaluating the criteria listed in this subsection (A)(2).
- (f) Projects may not give preferences to potential tenants based on:
  - (i) residing in the jurisdiction of a particular local government,
  - (ii) having a particular disability, or
  - (iii) being part of a specific occupational group (e.g. artists).
- (g) Age-restricted (senior) projects may not contain three or more bedroom units.
- (h) No project can have more than four (4) income bands consisting of: 20%, 30%, 40%, 50%, 60%, 70%, 80% of area median income, and market rate.

**B. RENT AFFORDABILITY**

**1. FEDERAL RENTAL ASSISTANCE**

Applicants proposing to convert tenant-based Housing Choice Vouchers (Section 8) to a project-based subsidy (pursuant to 24 CFR Part 983) must submit a letter from the issuing authority in a form approved by the Agency. Conversion of vouchers will be treated similar to a funding source under Section VI(B)(6)(e); a project will be ineligible for an allocation if it does not meet requirements set by the Agency as part of the application and award process. Such requirements may involve the public housing authority's (PHA's) Annual Plan, selection policy, and approval for advertising.

**2. TENANT RENT LEVELS AND RPP (MAXIMUM 2 POINTS)**

An application may earn points under one of the following scenarios:

- (a) If the project is in a High Income county:
  - 2 points will be awarded if at least twenty-five percent (25%) of qualified low-income units will be affordable to and occupied by households with incomes at or below thirty percent (30%) of area median income.

- 1 point will be awarded if at least fifteen percent (15%) of qualified low-income units will be affordable to and occupied by households with incomes at or below thirty percent (30%) of area median income.
- (b) If the project is in a Moderate Income county:
  - 2 points will be awarded if at least twenty-five percent (25%) of qualified low-income units will be affordable to and occupied by households with incomes at or below forty percent (40%) of area median income.
  - 1 point will be awarded if at least fifteen percent (15%) of qualified low-income units will be affordable to and occupied by households with incomes at or below forty percent (40%) of area median income.
- (c) If the project is in a Low Income county:
  - 2 points will be awarded if at least twenty-five percent (25%) of qualified low-income units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of area median income.
  - 1 point will be awarded if at least fifteen percent (15%) of qualified low-income units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of area median income.

To qualify for an RPP loan, at least forty percent (40%) of qualified low-income units in a project will be affordable to and occupied by households with incomes at or below fifty percent (50%) of area median income. Targeting in subsection (a), (b) or (c) above counts towards this requirement.

3. INCOME AVERAGING

Only new construction projects and rehabilitation projects not subject to an existing Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits are eligible to utilize income averaging. Applicants electing to use income averaging must comply with the following:

- (a) The income average for the property cannot exceed 60% of area median income,
- (b) The income average for any bedroom type cannot exceed 60% of area median income,
- (c) At least ten percent (10%) of qualified low-income units will be affordable to and occupied by households with incomes at or below thirty percent (30%) of area median income.
- ~~(b)~~(d) Market rate units are prohibited, and
- ~~(c)~~(e) For projects with more than one building, Owners must select that each building is part of a multiple building set-aside on line 8b in Part II of IRS Form 8609.

C. PROJECT DEVELOPMENT COSTS, RPP LIMITATIONS, AND WHLP

1. MAXIMUM PROJECT DEVELOPMENT COSTS (NEGATIVE 10 POINTS)

~~Cost restrictions and negative points related to construction costs waived for 2023 applications. This section reserved for future use.~~

- (a) The Agency will assess negative points to applications listing more than the following in lines 5 and 6 of the Project Development Costs (PDC) description, as outlined in Chart A below. The point structure in Chart B will apply to the following:
  - all units are detached single family houses or duplexes,
  - servicing persons with severe mobility impairments,
  - development challenges resulting from being within or adjacent to a central business district,
  - public housing redevelopment projects, or

- building(s) with both steel and concrete construction and at least four stories of housing.  
The per-unit amount calculation includes all items covered by the construction contract,  
ENERGY STAR, certifications for green programs, and any other costs not unique to the specific  
proposal.

Chart A	Chart B
\$130,000 -10	\$145,000 -10

- (b) The Agency will review proposed costs for historic adaptive re-use projects and approve the amount during the full application review process.

See Section VI(B) for other cost restrictions.

**2. RESTRICTIONS ON RPP AWARDS**

- (a) Projects requesting RPP funds must submit the Agency’s “Notice of Real Property Acquisition” form with the preliminary application and may not:
- (i) request RPP funds in excess of the following amounts per unit: \$15,000 in High Income counties; \$20,000 in Moderate Income counties; \$25,000 in Low Income counties,
  - (ii) include market-rate units, (iii) involve Principals who have entered into a workout or deferment plan within the previous year for an RPP loan awarded after January 1, 2013,
  - (iv) request less than \$150,000 or more than \$1,600,000 per project,
  - (v) have a commitment of funds from a local government under terms that will result in more repayment than determined under subsection (C)(2)(b) below,
  - (vi) have a federally insured loan or one which would require the RPP loan to have a term of more than 20 years or limits repayment, or
  - (vii) have a Principal or General Contractor listed on SAM.gov as being ineligible to receive federal funds.

The maximum award of RPP funds to any one Principal will be a total of \$3,200,000. Requesting an RPP loan may result in an application being ineligible under Section VI(B)(6)(e) if the Agency has inadequate funds.

- (b) Projects may only request an RPP loan if the principal and interest payments for RPP and any local government financing will be equal to the anticipated net operating income divided by 1.15, less conventional debt service:

$$\text{Repayment of RPP and local government loans} = (\text{NOI} / 1.15) - \text{conventional debt service.}$$

The amount of repayment will be split between the RPP loan and local government lenders based on their relative percentage of loan amounts. For example:

RPP Loan =	\$400,000			
local government loan =	\$200,000			
		Year 1	Year 2	Year 3
Anticipated amount available for repayment	\$10,000	\$8,000	\$6,000	\$4,000
RPP principal and interest payments	\$6,667	\$5,333	\$4,000	\$2,667
local government P&I payments	\$3,333	\$2,667	\$2,000	\$1,333

Lien position will be determined by loan amount: the larger loan will have the higher lien position. For equal loan amounts, the local government will have the higher lien position.

- (c) Loan payments made to the Applicant, any Principal, member or partner of the ownership entity, or any affiliate thereof, will be taken out of cash flow remaining after RPP payments.
- (d) An application may be ineligible for RPP funds due to one or more of the listed parties (including but not limited to members/partners, general contractor, and management agent) having failed to comply with the Agency's requirements on a prior loan.

3. WORKFORCE HOUSING LOAN PROGRAM (Subject to appropriation)

- (a) Projects with 9% Tax Credits which meet the Agency's loan criteria are eligible for WHLP. As required under the legislation, these criteria support the financing of projects similar to those created under G.S. 105-129.42.
- (b) A loan will not be closed until the outstanding balance on the first-tier construction financing exceeds the principal amount and the entire loan must be used to pay down a portion of the then existing construction debt.
- (c) The terms will be zero percent (0%) interest, thirty year balloon (no payments). The Agency will take all eligible sources into consideration in setting the amount. The following percent of eligible basis will be the calculated loan amount. In no event will the loan amount exceed the statutory maximum.

County Income Designation	Percent of Eligible Basis	Statutory Maximum
High	4%	\$250,000
Moderate	10%	\$1,500,000
Low	16%	\$2,000,000

Requesting a WHLP loan may result in an application being ineligible under Section VI(B)(6)(e) if the Agency has inadequate funds. ~~Projects in the Metro geographic set aside are ineligible to request WHLP.~~ The maximum award of WHLP funds to any one Principal will be a total of \$2,000,000.

4. GOLDEN LEAF AFFORDABLE WORKFORCE HOUSING INITIATIVE

The Golden LEAF (Long-term Economic Advancement Foundation), Inc., a 501(c)(3) organization, promotes the social welfare and lessens the burdens of government by providing economic impact assistance to economically affected or tobacco-dependent regions of North Carolina. In collaboration with the Agency, Golden LEAF has created the Affordable Workforce Housing Initiative and is providing up to \$6,000,000 to assist in financing the development of federal low-income housing tax credit projects located in the following designated counties:

<u>Bladen</u>	<u>Jones</u>	<u>Rutherford</u>
<u>Burke</u>	<u>Lenoir</u>	<u>Sampson</u>
<u>Caswell</u>	<u>Martin</u>	<u>Scotland</u>
<u>Columbus</u>	<u>Nash</u>	<u>Surry</u>
<u>Cumberland</u>	<u>Northampton</u>	<u>Warren</u>

Duplin	Onslow	Wayne
Edgecombe	Pitt	Wilkes
Greene	Randolph	Wilson
Halifax	Robeson	
Hoke	Rockingham	

Any 9% new construction family application in these designated counties that elects the income averaging option may apply up to \$2,000,000 per eligible project under the Initiative, subject to funding availability. The terms will be zero percent (0%) interest, up to 30 years, payment deferred, until the end of the loan term.

Requesting a Golden LEAF loan may result in an application being ineligible under Section VI(B)(6)(e) if the Agency has inadequate funds.

**D. CAPABILITY OF THE PROJECT TEAM**

**1. DEVELOPMENT EXPERIENCE**

- (a) To be eligible for an award of 9% Tax Credits, at least one Principal must have successfully developed, operated and maintained in compliance either one (1) 9% Tax Credit project in North Carolina or six (6) separate 9% Tax Credit projects totaling in excess of 200 units. The project(s) must have been placed in service between January 1, ~~2015-2016~~ and January 1, ~~2022-2023~~. Such Principal must:
  - (i) be identified in the preliminary application as the Applicant under Section III(C)(7),
  - (ii) become a general partner or managing member of the ownership entity, and
  - (iii) remain responsible for overseeing the project and operation of the project for a period of at least two (2) years after placed in service. The Agency will determine what qualifies as successful and who can be considered as involved in a particular project.
- (b) All owners and Principals must disclose all previous participation in the low-income housing tax credit program. Additionally, owners and Principals that have participated in an out of state tax credit allocation may be required to complete an Authorization for Release of Information form.
- (c) The Agency reserves the right to determine that a particular development team does not meet the threshold requirement of subsection (D)(1)(a) due to differences between its prior work and the proposed project. Particularly important in this evaluation is the type of subsidy program used in the previous experience (such as tax-exempt bonds, RD).

**2. MANAGEMENT EXPERIENCE**

The management agent must be eligible to be on the Approved Management Company List. To be Approved, the management agent must:

- (a) have at least one similar tax credit project in their current portfolio,
- (b) have a valid North Carolina real estate license and be registered with the North Carolina Secretary of State as of the full application deadline (excluding public housing authorities),
- (c) be requesting Key assistance timely and accurately (if applicable),
- (d) be reporting in the Agency's Rental Compliance Reporting System (RCRS) timely and accurately (if applicable)
- (e) have at least one staff person in a supervisory capacity with regard to the project who has attended at least three Agency sponsored trainings within the past 12 months (currently named

Compliance 101, Advanced Compliance and DHHS Targeting and Key) as of the full application  
(Beginning 2024 QAP, this requirement will only be reviewed at the end of the calendar year)  
and

- (f) have at least one staff person serving in a supervisory capacity with regard to the project who has been certified as a tax credit compliance specialist.

Such certification must be from an organization approved by the Agency (see **Appendix C**). None of the persons or entities serving as management agent may have in their portfolio a project with material or uncorrected noncompliance beyond the cure period unless there is a plan of action to address the issue(s). Any management agent found to have implemented a rent increase on an existing tax credit property without the required Agency approval may be prohibited from serving as management agent for an application. Should a management agent be removed from the Approved Management Company list for failure to comply with the above requirements, and the issue is not resolved following an opportunity to cure, the management agent will remain off of the Approved Management list for a period of no less than one year. The management agent listed on the application must be retained by the ownership entity for at least two (2) years after project completion, unless the Agency approves a change.

### 3. PROJECT TEAM DISQUALIFICATIONS

The Agency may disqualify any owner, Principal or management agent, who:

- (a) has been debarred or received a limited denial of participation in the past ten years by any federal or state agency from participating in any development program;
- (b) within the past ten years has been in a bankruptcy; an adverse fair housing settlement, judgment or administrative determination; an adverse civil rights settlement, judgment or administrative determination; or an adverse federal, state or local government proceeding and settlement, judgment or administrative determination;
- (c) has been in a mortgage default or arrearage of three months or more within the last five years on any publicly subsidized project;
- (d) has been involved within the past ten years in a project which previously received an allocation of tax credits but failed to meet standards or requirements of the tax credit allocation or failed to fulfill one of the representations contained in an application for tax credits;
- (e) has been found to be directly or indirectly responsible for any other project within the past five years in which there is or was uncorrected noncompliance more than three months from the date of notification by the Agency or any other state allocating agency;
- (f) interferes with a tax credit application for which it is not an owner or Principal at a public hearing or other official meeting;
- (g) has outstanding flags in HUD's national 2530 National Participation system;
- (h) has been involved in any project awarded tax credits after 2000 where there has been a change in general partners or managing members during the last five years that the Agency did not approve in writing beforehand;
- (i) would be removed from the ownership of a project that is the subject of an application under the rehabilitation set-aside in the current cycle;
- (j) requested a qualified contract for a North Carolina tax credit property; or
- (k) is not in good standing with the Agency.

A disqualification under this subsection (D)(3) will result in the individual or entity involved not being allowed to participate in the ~~2023~~2024 cycle and removing from consideration any application where they are identified.

E. UNIT MIX AND PROJECT SIZE

1. Ten (-10) points will be subtracted from any full application that includes market-rate units. This penalty will not apply where either
  - the rents for all market rate units are at least five percent (5%) higher than the maximum allowed for a unit at 80% AMI and the market study indicates that such rents are feasible, or
  - there is a commitment for a grant or no-payment financing equal to at least the amount of foregone federal tax credit equity.
2. New construction 9% Tax Credit projects may not exceed the following:
  - Metro Region - one hundred and twenty (120) units
  - Central, East, and West Regions - eighty-four (84) units.
3. New construction tax-exempt bond projects may not exceed two hundred (200) units unless approved by the Agency prior to the preliminary application submission.
4. All new construction projects must have at least twenty-four (24) qualified low-income units.

The Agency reserves the right to waive the penalties and limitations in this Section IV(E) for proposals that reduce low-income and minority concentration, including public housing projects, and subsection (E)(2) for proposals that are within a transit station area as defined by the Charlotte Region Transit Station Area Joint Development Principles and Policy Guidelines or adaptive re-use projects where made necessary by the building(s) physical structure.

F. SPECIAL CRITERIA AND TIEBREAKERS

1. ENERGY STAR CERTIFICATION

New construction residential buildings must achieve ENERGY STAR Multifamily New Construction Program certification and comply with all energy efficiency standards as defined in **Appendix B** (incorporated herein by reference). Adaptive re-use and rehabilitation projects must comply to the extent doing so is economically feasible and as allowed by historic preservation rules.

2. APPLICANT BONUS POINTS (MAXIMUM 2 POINTS)

An Applicant is entitled to two bonus points as part of the full application submission. No application can receive more than one bonus point. No Principal or Applicant is entitled to more than two bonus points for all applications in which they may be involved. Should an Applicant or Principal use more than 2 bonus points, the Agency will determine which application, if any, receives the bonus point(s), ~~if at all~~.

3. UNITS FOR THE MOBILITY IMPAIRED

Five percent (5%) of all units in new construction projects must meet the accessibility standards as defined in **Appendix B** (incorporated herein by reference). THESE UNITS ARE IN ADDITION TO MOBILITY IMPAIRED UNITS REQUIRED BY FEDERAL AND STATE LAW (INCLUDING BUILDING CODES). If laws or codes do not require mobility impaired units for a project, a total of ten percent (10%) of the units must be fully accessible. Units for the mobility impaired should be available to all tenants who would benefit from their design and are not necessarily reserved under the Targeting Program requirements of subsection (F)(4).

4. TARGETING PROGRAM

All projects will be required to target ten percent (10%) of the total units to persons with disabilities and persons who are homeless. Projects with federal project-based rental assistance must target at least five (5) units regardless of size. Projects that have targeted units under this subsection are not required to provide onsite supportive services or a service coordinator.

Owners must submit the following documents, all of which are fully described in **Appendix D** (incorporated herein by reference).

- (a) Targeting Unit Agreement
- (b) Owner Agreement to Participate (if applicable)
- (c) Property Profile
- (d) Tenant Selection Plan
- (e) Rental Assistance Plan (if applicable)
- (f) Affirmative Fair Housing Marketing Plan

These documents must be submitted to the Agency no later than the times specified in **Appendix D** but in no case later than six months prior to the project's placed in service date. The Agency may set additional requirements, as needed. The requirements of this subsection (F)(4) may be fully or partially waived to the extent the Agency determines they are not feasible.

5. OLMSTEAD SETTLEMENT INITIATIVE (MAXIMUM 4 POINTS)

- (a) Projects proposing 1 bedroom units as a percentage of the total project units will be awarded points based on the following:

7.5% of total units	1 point
10% of total units	2 points
15% of total units	3 points

Tax-exempt bond projects must contain 1 bedroom units totaling a minimum of 10% of total project units.

- (b) Projects proposed in the following DHHS priority counties will be awarded 1 point.

Alamance	Gaston	Orange
Buncombe	Guilford	Pitt
Burke	Henderson	Robeson
Cabarrus	Iredell	Wake
Cumberland	Mecklenburg	Wayne
Durham	New Hanover	Wilson
Forsyth		

6. SECTION 1602 EXCHANGE PROJECTS (NEGATIVE 40 POINTS)

The Agency may deduct up to forty (-40) points from any application if the Applicant, any owner, Principal or affiliate thereof is also involved in a Section 1602 Exchange project with uncorrected material noncompliance.

7. TIEBREAKER CRITERIA

The following will be used to award tax credits in the event that the final scores of more than one project are identical.

- (a) First Tiebreaker: The county with the highest cost burden low income renters per 9% tax credit unit funded over the last 5 years (see **Appendix L**).
- (b) Second Tiebreaker: The project with the highest percentage of non-Agency awarded and non-related party funding (excluding federal equity and bank loans) as a percentage of total replacement costs at time of full application submission.
- (c) Third Tiebreaker: Earliest preliminary application submittal.
- (d) SecondFourth Tiebreaker: The project with the lowest average income targeting at time of preliminary application submission.
- (e) ThirdFifth Tiebreaker: Tenants with Children: Projects that can serve tenant populations with children. Projects will qualify for this designation if at least twenty-five (25%) of the units are three or four bedrooms. This tiebreaker will only apply where the market study shows a clear demand for this population (as determined by the Agency).
- (f) FourthSixth Tiebreaker: Tenant Ownership: Projects that are intended for eventual tenant ownership. Such projects must utilize a detached single family site plan and building design and have a business plan describing how the project will convert to tenant ownership at the end of the 30-year compliance period.

In the event that a tie remains after considering the above tiebreakers, the project requesting the least amount of federal tax credits will be awarded.

G. DESIGN STANDARDS

All proposed measures must be shown in the application to receive points.

1. THRESHOLD REQUIREMENTS

The minimum threshold requirements for design are found in **Appendix B** (incorporated herein by reference) and must be used for all projects receiving tax credits or RPP funding.

2. CRITERIA FOR SCORE EVALUATION (MAXIMUM 30 POINTS)

The Agency will determine points based on the following criteria as applied to the site drawings submitted with the full application.

(a) Site Layout

The Agency will award up to 5 points based on its evaluation of the site layout. The following characteristics will be considered.

- (i) The location of residential buildings in relation to parking, site amenities, community building, postal facilities and trash collection areas.
- (ii) The degree to which site layout ensures a low, controlled traffic speed through the project.

(b) Quality of Design and Construction

(The points in this subsection are mutually exclusive with Section IV(G)(2)(c) below.)

The Agency will award up to 25 points for new construction projects based on its evaluation of the quality of the building design, and the materials and finishes specified. The following characteristics will be considered:

- (i) The extent to which the design uses multiple roof lines, gables, dormers and similar elements to break up large roof sections.
  - (ii) The extent to which the design uses multiple types, styles, and colors of siding and brick veneer to add visual appeal to the building elevations.
  - (iii) The level of detail that is achieved through the use of porches, railings, and other exterior features.
  - (iv) Use of brick veneer or masonry products on building exteriors.
- (c) Adaptive Re-Use
- (The points in this subsection are mutually exclusive with Section IV(G)(2)(b) above.)
- The Agency will award up to 25 points based on the following characteristics:
- (i) The extent to which the building(s) fit with surrounding streetscape after adaptation or have problems with orientation, sightlines, bulk and scale.
  - (ii) Aesthetics after adaptation.
  - (iii) Presence of special design elements or architectural features that may not be physically or financially available if new construction was introduced on the same site.

H. CRITERIA FOR SELECTION OF REHABILITATION PROJECTS

1. GENERAL THRESHOLD REQUIREMENTS

To be eligible for an allocation under Section II(A), a project must:

- (a) have either (i) received a tax credit allocation and be in the extended use period or (ii) federal project-based rental assistance for at least thirty percent (30%) of the total units,
- (b) have been placed in service on or before December 31, 2008,
- (c) require rehabilitation expenses in excess of \$25,000 per unit (as supported by a physical needs assessment conducted or approved by the Agency),
- (d) not have an acquisition cost in excess of sixty percent (60%) of the total replacement costs,
- (e) not be feasible using tax-exempt bonds (as determined by the Agency),
- (f) not have received an Agency loan in the last five years,
- (g) not be deteriorated to the point of requiring demolition,
- (h) not have begun or completed a full debt restructuring under the Mark to Market process (or any similar HUD program) within the last five years, and
- (i) ~~Cost restrictions related to rehabilitation waived for 2023 applications. This item reserved for future use.~~ have total replacement costs of less than \$190,000 per unit, including all Agency-required rehabilitation work.

Rehabilitation expenses include hard construction costs directly attributable to the project, excluding costs for a new community building, as calculated using lines 2 through 7 (less line 6) in the PDC description.

2. THRESHOLD DESIGN REQUIREMENTS

In addition to the relevant sections of Appendix B (incorporated herein by reference), the Agency will require owners to complete the following as appropriate for their project.

- (a) Improve site amenities and common areas by upgrading or adding a freestanding community building, making repairs and additions to landscaping, adding new site amenities such as playgrounds, and repairing parking areas.

- (b) Improve building exteriors by replacing deteriorated siding, replacing aged roofing, adding gutters and downspouts, and adding new architectural features to improve appearance.
- (c) Upgrade unit interiors by replacing flooring, installing new cabinets and countertops, replacing damaged interior doors, replacing light fixtures, and repainting units.
- (d) Replace and upgrade mechanical systems and appliances including HVAC systems, water heaters and plumbing fixtures, electrical panels, refrigerators, and ranges.
- (e) Improve energy efficiency by replacing inefficient doors and windows, adding additional insulation in attics, and upgrading the efficiency of mechanical systems and appliances.
- (f) Improve site and unit accessibility for persons with disabilities by making necessary alterations at common areas, alterations at single story ground floor units, adding or improving handicapped parking areas, and repairing or replacing sidewalks along accessible routes.

3. EVALUATION CRITERIA

The Agency will evaluate applications under Section II(A) based on the following criteria, which are listed in order of importance. Each one will serve both to determine awards and as a threshold requirement; the Agency may remove an application from consideration if the proposal is sufficiently inadequate in any of the categories. For purposes of making awards, the Agency will not consider subsections (d) through (f) below if the outcome is determined by the criteria in subsections (a) through (c).

- (a) The Agency will give the highest priority to applications proposing to rehabilitate the most distressed housing with a tax credit allocation, particularly buildings with accessibility or life, health and safety problems.
- (b) Applications will have a reduced likelihood of receiving an award of tax credits if the Agency determines the property has not been properly maintained and any current owner will remain part of the new ownership.
- (c) Applications will have a reduced likelihood of being awarded tax credits to the extent that the purpose is to subsidize an ownership transfer.
- (d) Shortcomings in the above criteria will be mitigated to the extent that a tax credit allocation is necessary to prevent (i) conversion of units to market rate rents or (ii) loss of government resources (including past, present and future investments).
- (e) The Agency will give priority to applications that have mortgage subsidy resources committed as part of the application.
- (f) Applications will have priority to the extent that the rehabilitation improvements are a part of a community revitalization plan or will benefit the surrounding community. However, projects in severely distressed areas will have a reduced likelihood of being awarded tax credits.
- (g) Applications will have a reduced likelihood of being awarded tax credits based on the number of tenants that would be permanently relocated (including market-rate).
- (h) While the rehabilitation set-aside is not subject to any regional set-aside, the Agency will consider the geographic distribution of this resource and will attempt to avoid a concentration of awards in any one area of the state.

V. ALLOCATION OF BOND CAP

A. ORDER OF PRIORITY

The Committee will allocate the multifamily portion of the state's tax-exempt bond authority in the following order of priority:

2024~~3~~ QUALIFIED ALLOCATION PLAN  
26 of ~~33~~35

1. Projects that serve as a component of an overall public housing revitalization effort.
2. Rehabilitation of existing rent restricted housing.
3. Rehabilitation of projects consisting of entirely market-rate units.
4. Adaptive re-use projects.
5. Other new construction projects.

Applications will only be allocated bond authority if there is enough remaining after awarding all eligible applications in higher priority levels. Within each category, applications seeking the least amount of authority per low-income unit will have priority.

**B. ELIGIBILITY FOR AWARD**

Except as otherwise indicated, owners of projects with tax-exempt bonds and 4% Tax Credits must meet all requirements of the Plan. Even with an allocation of bond authority, projects must meet the threshold requirements to be eligible for tax credits.

1. All projects must meet the requirements under Section IV(F)(4).
2. Rehabilitation applications must:
  - (a) have been placed in service on or before December 31, 200~~8~~7,
  - (b) require rehabilitation expenses in excess of \$~~30,000~~~~45,000~~ per unit,
  - (c) not have an acquisition cost in excess of seventy percent (70%) of the total replacement costs,
  - (d) not have begun or completed a full debt restructuring under the Mark to Market process (or any similar HUD program) within the last five years, and
  - (e) not be deteriorated to the point of requiring demolition.
3. The inducement resolution must be submitted with the full application.
4. To be eligible for an award of tax-exempt bond volume, at least one Principal must have successfully developed, operated and maintained in compliance either one 9% Tax Credit project in North Carolina or one tax-exempt bond project in any state. The project must have been placed in service between January 1, ~~2015-2016~~ and January 1, ~~2022~~~~2023~~. Such Principal must:
  - be identified in the preliminary application as the Applicant under Section III(C)(7),
  - become a general partner or managing member of the ownership entity, and
  - remain responsible for overseeing the project and operation of the project for a period of two (2) years after placed in service.

The Agency will determine what qualifies as successful and who can be considered as involved in a particular project.

**VI. GENERAL REQUIREMENTS**

**A. GENERAL THRESHOLD REQUIREMENTS FOR PROJECT PROPOSALS**

**1. PROJECTS WITH HISTORIC TAX CREDITS**

Buildings either must be on the National Register of Historic Places or approved for the State Historic Preservation Office's study list at the time of the full application. Evidence of meeting this requirement should be provided.

**2. NONPROFIT SET-ASIDE**

For purposes of being considered as a nonprofit sponsored application under Section II(D)(1)(a), at least one nonprofit entity (or, where applicable, its qualified corporation) involved in a project must:

- (a) be qualified under Section 501(c)(3) or (4) of the Code,
- (b) materially participate, as defined under federal law, in the acquisition, development, ownership, and ongoing operation of the property for the entire compliance period,
- (c) have as one of its exempt purposes the fostering of low-income housing,
- (d) be a managing member or general partner of the ownership entity.

The Agency reserves the right to make a determination that the nonprofit owner is not affiliated with or controlled by a for-profit entity or entities other than a qualified corporation. There can be no identity of interest between any nonprofit owner and for-profit entity, other than a qualified corporation.

### 3. REQUIRED REPORTS

All projects involving use of existing structures must submit the following:

- (a) For projects built prior to 1978, a hazardous material report which provides the results of testing for asbestos containing materials, lead based paint, Polychlorinated Biphenyls (PCBs), underground storage tanks, petroleum bulk storage tanks, Chlorofluorocarbons (CFCs), and other hazardous materials. The testing must be performed by professionals licensed to do hazardous materials testing. A report written by an architect or building contractor or developer will not suffice. A plan and projected costs for removal of hazardous materials must also be included.
- (b) A report assessing the structural integrity of the building(s) being renovated from an architect or engineer. Report must be dated no more than six (6) months from the full application deadline.
- (c) A current termite inspection report. Report must be dated no more than six (6) months from the full application deadline.

### 4. APPRAISALS

The Agency will not allow the project budget to include more for land or lease costs than the lesser of its appraised market value or the purchase or lease price. Applicants must submit with the full application a real estate "as is" appraisal that is a) dated no more than six (6) months from the full application deadline, b) prepared by an independent, state certified appraiser and c) complies with the Uniform Standards of Professional Appraisal Practice. The appraisal must encompass all parcels that comprise the project. Comparable properties used in the appraisal must be in reasonable proximity to the project. The Agency may order an additional appraisal with costs to be paid by the Applicant. Appraisals for rehabilitation and adaptive re-use projects must break out the land and building values from the total value.

### 5. CONCENTRATION

Projects cannot be in areas of minority and low-income concentration (measured by comparing the percentage of minority and low-income households in the site's census tract with the community overall). The Agency may make an exception for projects in economically distressed areas which have community revitalization plans with public funds committed to support the effort.

### 6. DISPLACEMENT

For rehabilitation projects and in every other instance of tenant displacement, including temporary, the Applicant must supply with the full application a plan describing how displaced persons will be relocated, including a description of the costs of relocation. The owner is responsible for all relocation expenses, which must be included in the project's development budget. Owners must also

comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as revised in 49 C.F.R. Part 24.

7. FEASIBILITY

The Agency will not allocate tax credits or RPP funding to applications that may have difficulty being completed or operated for the compliance period. Examples include projects that may not secure an equity investment or a Principal that has inadequate capacity to successfully carry out the development process.

8. SMOKE-FREE HOUSING

Owners must prohibit smoking in all indoor common areas, individual living areas (including patios and balconies), and within 25 feet of building entries or ventilation intakes. A non-smoking clause must be included in the lease for each household.

B. UNDERWRITING THRESHOLD REQUIREMENTS

The following minimum financial underwriting requirements apply to all projects. Projects that cannot meet these minimum requirements, as determined by the Agency, will not receive tax credits or RPP funding. Any documentation required as part of the application must be dated and be within 6 months of the application deadline, unless otherwise stated.

1. LOAN UNDERWRITING STANDARDS

- (a) Projects applying for tax credits only will be underwritten with rents escalating at two percent (2%) and operating expenses escalating at three percent (3%).
- (b) All projects will be underwritten assuming a constant seven percent (7%) vacancy and must reflect a 1.15 Debt Coverage Ratio (DCR) for twenty (20) years.
- (c) Applications requesting RPP funds must use current Low HOME rents for fifteen percent (15%) of the total units (spread proportionally through all bedroom types) and may be required to comply with HOME program requirements, including 42 U.S.C. 12701 et seq., 24 C.F.R. Part 92 and all relevant administrative guidance. Projects awarded RPP funds must also comply with the RPP Guidelines in **Appendix G** (incorporated herein by reference).
- (d) The Agency may determine that the interest rate on a loan must be reduced where an application shows an excessive amount accruing towards a balloon payment.

2. OPERATING EXPENSES

- (a) New construction (excluding adaptive re-use): minimum of \$3,800 per unit per year not including taxes, reserves and resident support services.
- (b) Renovation (includes rehabilitation and adaptive re-use): minimum of \$4,000 per unit per year not including taxes, reserves and resident support services. For projects with RD loans, the operating expenses will be based upon the current RD approved operating budget.

3. EQUITY PRICING

- (a) Projects will be underwritten using Applicants proposed equity pricing. Pricing above \$0.8790 will require a commitment letter from a syndicator or investor with as much detail as is possible. At a minimum, the letter should include the equity pricing, total capital contribution amount, estimated pay-in schedule and any reserve requirements. Should an Applicant receive an allocation of tax credits and fail to receive equity pricing at least equal to the pricing used in the awarded application, any equity shortfall will be the responsibility of the Applicant. The Agency will not approve an increase of the rents stated in the awarded application to support additional debt to cover the equity shortfall.

- (b) Equity should be calculated net of any syndication fees. Bridge loan interest typically incurred by the syndicator to enable an up front payment of equity should not be charged to the project directly, but be reflected in the net payment of equity. Equity should be based on tax credits to be used by the investor(s), excluding those allocated to the Principals unless these entities are making an equity contribution in exchange for the tax credits.

4. RESERVES

- (a) Operating Reserve: Required for all projects except those receiving loan funds from RD. The operating reserve will be the greater of a) \$1,500 per unit or b) six month's debt service and operating expenses (four months for tax-exempt bond projects), and must be maintained for the duration of the extended use period.

The operating reserve can be funded by deferring the developer fees of the project. If this method is utilized, the deferred amounts owed to the developer can only be repaid from cash flow if all required replacement reserve deposits have been made. For tax credit projects where no RPP loan applies, the operating reserve can be capitalized by an equity pay in up to one year after certificate of occupancy is received. This will be monitored by the Agency. This reserve must stay with the project at the time of investor exit.

- (b) Replacement Reserve: All new construction projects must budget replacement reserves of \$250 per unit per year. Rehabilitation and adaptive re-use projects must budget replacement reserves of \$350 per unit per year. The replacement reserve must be capitalized from the project's operations, escalating by four percent (4%) annually. This reserve must stay with the project at the time of investor exit.

In both types of renovation projects mentioned above, the Agency reserves the right to increase the required amount of annual replacement reserves if the Agency determines such an increase is warranted after a detailed review of the project's physical needs assessment.

For those projects receiving RD loan funds, the required funding of the replacement reserve will be established, administered and approved by RD.

5. DEFERRED DEVELOPER FEES (NEGATIVE 2 POINTS)

Developer fees can be deferred to cover a gap in funding sources as long as:

- (a) the entire amount will be paid within fifteen years and meets the standards required by the IRS to stay in basis,
- (b) the deferred portion does not exceed fifty percent (50%) of the total amount as of the full application, and
- (c) payment projections do not negatively impact the operation of the project.

Each of these will be determined by the Agency. Nonprofit organizations must include a resolution from the Board of Directors allowing such a deferred payment obligation to the project. The developer may not charge interest on the deferred amount in excess of the long term AFR.

Deferral of more than twenty-five (25%) of the total developer fee will result in a deduction of 2 points.

6. FINANCING COMMITMENT

- (a) For all projects proposing private permanent financing, a letter of intent is required (see **Appendix E**). This letter must be on lender's letterhead, must clearly state the term of the permanent loan is at least fifteen (15) years, how the interest rate will be indexed and the current rate at the time of the letter, the amortization period, any prepayment penalties, anticipated

security interest in the property, and lien position. The interest rate must be fixed and no balloon payments may be due for fifteen years.

- (b) For all projects proposing public permanent financing, binding commitments on lender's letterhead are required to be submitted by the full application deadline (see **Appendix E**). Local governments also must identify the source of funding (e.g. HOME, trust fund). All loans must have a fixed interest rate and no balloon payments for at least fifteen (15) years after project completion. A binding commitment is defined as a letter, resolution or binding contract from a unit of government. The same terms described for the letter of intent (using the format approved by the Agency) from a private lender must be included in the commitment.
- (c) The Agency may request a letter from a construction lender documenting the loan amount, interest rate, and any origination fees.
- (d) Any Owner Investment listed as a source cannot exceed \$10,000.
- (e) Applications may only include one set of proposed funding sources; the Agency will not consider multiple financial scenarios. A project will be ineligible for allocation if any of the listed funding sources will not be available in an amount or under the terms described in the application. The Agency may waive this limitation if the project otherwise demonstrates financial feasibility. Project cash flow may not be used as a source of funds.

7. DEVELOPER FEES

- (a) Developer fees shall be up to ~~\$20,000~~22,500 per unit for new construction projects and twenty-eight point five percent (28.5%) of PDC line item 4 for rehabilitation projects, both being set at award.
- (b) Contractor general requirements shall be limited to six percent (6%) of hard costs.
- (c) Contractor profit and overhead shall be limited to ten percent (10%) (8% profit, 2% overhead) of total hard costs, including general requirements.
- (d) Where an identity of interest exists between the owner and contractor, the contractor profit and overhead shall be limited to eight percent (8%) (6% profit, 2% overhead).

8. CONSULTING FEES

The total amount of any consulting fees and developer fees shall be no more than the maximum developer fee allowed to that project.

9. ARCHITECTS' FEES

The architects' fees, including design and inspection fees, shall be limited to three percent (3%) of the total hard costs plus general requirements, overhead, profit and construction contingency (total of lines 2 through 10 on the PDC description). This amount does not include engineering costs.

10. INVESTOR SERVICES FEES

Investor services fees must be paid from net cash flow and not be calculated into the minimum debt coverage ratio.

11. PROJECT CONTINGENCY FUNDING

All new construction projects shall have a hard cost contingency line item of five percent (5%) of total hard costs, including general requirements, contractor profit and overhead. Rehabilitation and adaptive re-use projects shall include a hard cost contingency line item of ten percent (10%) of total hard costs.

12. PROJECT OWNERSHIP

There must be common ownership between all units and buildings within a single project for the duration of the compliance period.

13. SECTION 8 PROJECT-BASED RENTAL ASSISTANCE

For all new construction projects that propose to utilize Section 8 project-based rental assistance, the Agency will underwrite the rents according to the tax credit and HOME limits. These limits are based on data published annually by HUD. If the Section 8 contract administrator is willing to allow rents above these limits, the project may receive the additional revenue in practice, but Agency underwriting will use the lower revenue projections regardless of the length of the Section 8 contract.

Given the uncertainty of long-term federal commitment to Section 8 rental assistance, the Agency considers underwriting to the more conservative revenue levels to best serve the project's long-term financial viability.

14. WATER, SEWER, AND TAP FEES

Any water, sewer, and tap fees charged to the project must be entered on a separate line item of the PDC description. Applications must provide letters from local provider(s) documenting either the amounts or if no fees will be charged.

**VII. POST-AWARD PROCESSES AND REQUIREMENTS**

**A. ALLOCATION TERMS AND REVOCATION**

1. At any time between award and issuance of IRS Form 8609, owners must have approval from the Agency prior to:
  - (a) changing the anticipated or final sources (amount, terms, or provider), including equity;
  - (b) increasing the anticipated or final uses by more than two percent (2%);
  - (c) altering the designs approved by
    - the Agency at full application, or
    - local building code office,including amenities, site layout, floor plans and elevations (Approved Design);
  - (d) starting construction, including sitework;
  - (e) increasing rents for new construction units;
  - (f) increasing rents for rehabilitation units above existing rents at time of award (rents shown in the approved application can be instituted once rehabilitation is complete);
  - (g) occupying units;
  - (h) any other change to the awarded application.

At its discretion, the Agency can request any documentation related to project costs. If an increase in uses or design alteration is due to a local government requirement, owners do not need prior approval but rather must provide the Agency with prompt written notice. Failure to comply with a requirement of this subsection may result in a fine of up to \$25,000, revocation of the reservation or allocation, future disqualification under Section IV(D)(3) of any Principal involved, or other recourse available to the Agency.

2. Ownership entities must submit a completed carryover agreement and expend at least ten percent (10%) of the project's reasonably expected basis, both by dates to be determined by the Agency.
3. IRS Form 8609 will not be issued until:

- (a) submission of a Final Cost Certification by an independent auditor that complies with the Agency's requirements;
  - (b) the owner documents attendance at an Agency sponsored or approved tax credit compliance seminar sponsored within the previous 12 months (see **Appendix C** for list of approved seminars); the management agent documents attendance at an Agency sponsored tax credit compliance seminar within the previous 12 months;
  - (c) monitoring fees have been paid;
  - (d) the project has been built according to the Approved Design;
  - (e) the Agency determines the project has adhered to all representations made in the approved application and will meet all relevant Plan requirements;
  - (f) documentation of the ownership entity having paid all applicable state and local taxes for the most recent year due; and
  - (g) submission of a listing of the name and address for all contractors and subcontractors indicating if there exists an identity of interest with the Owner and a statement from each representing the entity will comply with all applicable employment rules and regulations.
4. The actual tax credits allocated will be the lesser of the tax credits reserved, the applicable rate multiplied by qualified basis (as approved by the Agency), or the amount determined by the Agency pursuant to its evaluation as required under Section 42(m)(2) of the Code. Projects will be required to elect a project-based allocation. An allocation does not constitute a representation or warranty by the Agency or Committee that the ownership entity or its owners will qualify for the tax credits. The Agency's interpretation of the Code, regulations, notices, or other guidance is not binding on the federal government.
5. Owners must record, prior to all other liens against the property in the registry of deeds in the county where the project is located, a thirty (30) year Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits (Extended Use Agreement) stating the owner will not apply for relief under Section 42(h)(6)(E)(i)(II) of the Code and will comply with other requirements under the Code, Plan, other relevant statutes and regulations, and all representations made in the approved application. The Extended Use Agreement also may contain other provisions as determined by the Agency. The owner must have good and marketable title and obtain the consent of any prior recorded lienholder (other than for construction financing) to be bound by the Extended Use Agreement terms. Owners may not claim tax credits in any taxable year unless the Extended Use Agreement is in effect and appropriately recorded.
6. The Agency may revoke an allocation if the owner fails to implement all representations in the approved application. In addition to the terms of Section VII(A)(1), owners will acknowledge that the following constitute conditions to their allocation:
- (a) accuracy of all representations made to the Agency, including application uploads,
  - (b) adherence to the Plan and all applicable federal, state and local laws and ordinances, including the Code and Fair Housing Act,
  - (c) provision and maintenance of amenities for the benefit of the tenants, and
  - (d) not incurring a penalty under N.C.G.S. § 105-236 for failure to file a return, failure to pay taxes, or having a large tax deficiency (as defined under N.C.G.S. § 105-236). The Agency may request documentation demonstrating all project related taxes have been paid.

An owner's or project's failure to comply with all such conditions without written authorization from the Agency will entitle the Agency, in its discretion, to deem the allocation to be cancelled by mutual consent. After any such cancellation, the owner will acknowledge that neither it nor the project will

have any right to claim tax credits pursuant to the allocation. The Agency reserves the right, in its discretion, to modify or waive any such failed condition.

**B. COMPLIANCE MONITORING**

1. Owners must comply with Section 42 of the Code, IRS regulations, rulings, procedures, decisions and notices, state statutes, the Fair Housing Act, state laws, local codes, Agency loan documents, **Appendix F** (incorporated herein by reference), and any other legal requirements. The Agency may treat any failure to do so as a violation of the Plan.
2. The Agency will adopt and revise standards, policies, procedures, and other requirements in administering the tax credit program. Examples include training and online reporting. Owners must comply with all such requirements regardless of whether or not they expressly appear in the Plan or **Appendix F**. The Agency will have access to any project information, including physical access to the property, all financial records and tenant information.

**VIII. DEFINITIONS**

The terms listed below will be defined in the Plan as indicated below regardless of capitalization, unless the context clearly indicates otherwise. Terms used in the Plan but not defined below will have the same meaning as under the Code and IRS regulations.

4% Tax Credit: Low-income housing tax credits available pursuant to Section 42(h)(4) of the Code.

9% Tax Credit: Low-income housing tax credits available for allocation under the state's volume cap pursuant to Section 42(h)(3) of the Code.

Affiliate: As to any person or entity (i) any entity of which a majority of the voting interest is owned by such person or entity, (ii) any person or entity directly or indirectly controlling (10% or more) such person or entity, (iii) any person or entity under direct or indirect common control with any such person or entity, or (iv) any officer, director, employee, manager, stockholder (10% or more), partner or member of any such person or entity or of any person or entity referred to in the preceding clauses (i), (ii) or (iii).

Applicant: The entity considered under Section III(C)(~~6~~)7.

Choice-Limiting Activity: Includes leasing or disposition of real property and any activity that will result in a physical change to the property, including acquisition, demolition, movement, rehabilitation, conversion, repair, or construction.

Developer: Any individual or entity responsible for initiating and controlling the development process and ensuring that all, or any material portion of all, phases of the development process are accomplished. Furthermore, the developer is the individual or entity identified as such in the Ownership Entity Agreement and any and all Development Fee Agreements.

Entity: Without limitation, any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, public agency or other entity, other than a human being.

Management Agent: Individual(s) or Entity responsible for the day to day operations of the project, which may or may not be related to the Owner(s) or ownership entity.

Market-Rate Units: Units that are not subject to tax credit restrictions; does not include manager units.

Material Participation: Involvement in the development and operation of the project on a basis which is regular, continuous and substantial throughout the compliance period as defined in Code Sections 42 and 469(h) and the regulations promulgated thereunder.

Owner(s): Person(s) or entity(ies) that own an equity interest in the Ownership Entity.

Ownership Entity: The ownership entity to which tax credits and/or any RPP loan funds will be awarded.

Person: Any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so requires.

Person with a Disability: An adult who has a permanent physical or mental impairment which substantially limits one or more major life activities as further defined in North Carolina's Persons with Disabilities Protection Act (N.C.G.S. § 168A-3 (7a)).

Person who is Homeless: An adult who is living in places not meant for habitation (such as streets, cars, parks), emergency shelter, or in transitional or temporary housing but originally came from a place not meant for habitation or emergency shelter.

Principal: Principal includes (1) all persons or entities who are or who will become partners or members of the ownership entity, (2) all persons or entities whose affiliates are or who will become partners or members of the ownership entity, (3) all persons or entities who directly or indirectly earn a portion of the development fee for development services with respect to a project and/or earn any compensation for development services rendered to such project, which compensation is funded directly or indirectly from the development fee of such project, and such amount earned exceeds the lesser of twenty-five percent (25%) of the development fee for such project or \$100,000, and (4) all affiliates of such persons or entities in clause (3) who directly or indirectly earn a portion of the development fee for development services with respect to any project in the current year and/or earn any compensation for development services rendered to any project in the current year, which compensation is funded directly or indirectly from the development fee of any such project, and such amount earned exceeds the lesser of twenty-five percent 25% of the development fee for such project or \$100,000. For purposes of determining Principal status the Agency may disregard multiple layers of pass-through or corporate entities. A partner or member will not be a Principal where its only involvement is that of the tax credit equity investor.

Qualified Corporation: Any corporation if, at all times such corporation is in existence, 100% of the stock of such corporation is held by a nonprofit organization that meets the requirements under Code Section 42(h)(5).

Rental Production Program (RPP): Agency loan program for multifamily affordable rental housing.

**Note from the Codifier:** The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days. Statutory reference: G.S. 150B-21.2.

**TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Wildlife Resources Commission intends to adopt the rule cited as 15A NCAC 10F .0380 and amend the rules cited as 15A NCAC 10F .0305, .0316, .0338.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<https://www.ncwildlife.org/Proposed-Regulations>

**Proposed Effective Date:** February 1, 2024

**Public Hearing:**

**Date:** November 9, 2023

**Time:** 2:00 p.m.

**Location:** Zoom Meeting. Registration required:  
[https://ncwildlife-org.zoomgov.com/webinar/register/WN\\_Z-BRE3nQ2aYNGrEq0XlpA](https://ncwildlife-org.zoomgov.com/webinar/register/WN_Z-BRE3nQ2aYNGrEq0XlpA). Join by phone toll free: (833) 568-8864. Webinar ID: 161 353 2119.

**Reason for Proposed Action:** Amendments to the following rules are proposed to mitigate hazards to boater safety:

*15A NCAC 10F .0305 - Brunswick County submitted an application for an amendment to establish a no-wake zone on Lockwood Folly River to mitigate hazards to boater safety in a narrow channel with sharp bends, and to codify descriptions and addresses of Boating Access Areas in Brunswick County;*

*15A NCAC 10F .0316 - Rockingham County submitted an application for an amendment to establish a no-wake zone on Belews Lake at Carolina Marina to mitigate hazards to boater safety around the marina fuel dock, boat ramp, Dry Stack, and outdoor boat storage facilities;*

*15A NCAC 10F .0338 - Caldwell County submitted an application for an amendment to establish a no-wake zone on Lake Rhodhiss to mitigate hazards to boater safety within 50 yards of the Castle Bridge Marina facilities and fuel dock, and to codify descriptions and addresses of Boating Access Areas in Caldwell County;*

*15A NCAC 10F .0380 - the Town of Rhodhiss submitted an application for a new Rule to mitigate hazards to boater safety on Lake Hickory caused by heavy vessel traffic and underwater debris, from the Rhodhiss Dam eastward to a point 165 yards east of the S.R. 1611 Bridge.*

**Comments may be submitted to:** Rulemaking Coordinator, 1701 Mail Service Center, Raleigh, NC 27699; email [regulations@ncwildlife.org](mailto:regulations@ncwildlife.org)

**Comment period ends:** December 1, 2023

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit a written objection to the Rules Review Commission. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to [oah.rules@oah.nc.gov](mailto:oah.rules@oah.nc.gov). If you have any further questions concerning the submission of objections to the Commission, please review 26 NCAC 05 .0110 or call a Commission staff attorney at 984-236-1850.

**Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.**

- State funds affected
- Local funds affected
- Substantial economic impact ( $\geq$  \$1,000,000)
- Approved by OSBM
- No fiscal note required

**CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY**

**SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY**

**SECTION .0300 - LOCAL WATER SAFETY REGULATIONS**

Note: Text in italics is temporary language that expires May 11, 2024.

**15A NCAC 10F .0305 BRUNSWICK COUNTY**

(a) Regulated Areas. This Rule shall apply to the waters ~~and portions of waters~~ described as follows:

- (1) ~~Lockwoods~~ Lockwood Folly River in the Town of Varnamtown, from a point at 33.94966 N, 78.22587 W, 500 yards northwest of the boat ramp located at the end of S.R. 1123 otherwise known as Fisherman Road, to a point at 33.94498 N, 78.22206 W, 180 yards southeast of the boat ramp, and including the portion of the river otherwise known as Mill Creek where it meets ~~Lockwoods~~ Lockwood Folly River

- directly across from the boat ramp, to a point 100 feet northeast at 33.94687 N, 78.22235 W;
- (2) Calabash River in the Town of Calabash, from a point in the water at the end of Marina Drive at 33.88638 N, 78.56254 W to a point 650 yards southwest at the southern end of the deep-sea fishing docks at 33.88344 N, 78.56751 W;
- (3) ~~the Small Boat Harbor, Morningstar Marinas Southport,~~ shore to shore beginning at its intersection with the Intracoastal Waterway at a point at 33.91685 N, 78.02865 W;
- (4) Shallotte River east of S.R. 1233, otherwise known as Village Point Road SW south of the Town of Shallotte, shore to shore from its intersection with the Intracoastal Waterway at a point at 33.91477 N, 78.37103 W to point 500 feet north at 33.91613 N, 78.37126 W;
- (5) Montgomery Slough otherwise known as Davis Creek, within 100 yards of the hotel and marina at the northern end of 57<sup>th</sup> Place West in the Town of Oak Island;
- (6) the waters in the natural and concrete canals located on the south side of the Intracoastal Waterway, east of N.C. Highway 904 in the Town of Ocean Isle Beach;
- (7) Town Creek east of S.R. 1609, otherwise known as Clearview Lane in Town Creek Township, shore to shore from a point at 34.16788 N, 78.07139 W, north and east around a bend in the creek to a point at 34.16910 N, 78.07030 W;
- (8) Montgomery Slough, otherwise known as Davis Creek, shore to shore from its entrance at the Intracoastal Waterway west of SW Yacht Drive at a point at 33.92145 N, 78.19408 W, to the canal end at NE 40<sup>th</sup> Street in the Town of Oak Island;
- (9) Intracoastal Waterway in the Town of Sunset Beach, Beach in the vicinity of the S.R. 1172 Sunset Beach Bridge and Sunset Beach Boating Access Area at 101 Sunset Boulevard, shore to shore from a point 150 yards east of the Sunset Boulevard Beach South bridge Bridge at 33.88173 N, 78.50995 W, to a point 50 yards west of the bridge at 33.88111 N, 78.51194 W; and
- (10) Intracoastal Waterway in the Town of Ocean Isle Beach, Beach in the vicinity of the N.C. Highway 904 Odell Williamson Bridge and Ocean Isle Beach Boating Access Area at 67 Causeway Drive, shore to shore from a point 100 yards east of the N.C. Highway 904 Odell Williamson Bridge at 33.89578 N, 78.43870 W, to a point 100 yards west of the Bridge at 33.89567 N, ~~78.44092 W~~; 78.51194 W;
- (11) Lockwood Folly River at Rourk's Landing Subdivision, beginning at a point south of the subdivision at 33.95338 N, 78.22553 W, north and west around two sharp bends in the channel and ending north at a point at 33.95539 N, 78.22900 W;
- (12) N.C. Highway 130 Holden Beach Bridge and Holden Beach Boating Access Area at 99 S. Shore Drive, shore to shore between a point 250 feet west and a point 100 feet east of the Holden Beach Bridge;
- (13) within 50 yards of the Oak Island Boating Access Area at 4950 Fish Factory Road SE in Southport;
- (14) within 50 yards of the Sunset Harbor Boating Access Area at 356 Riverview Drive SE in Bolivia;
- (15) within 20 yards of the shoreline and 50 yards east and 50 yards west of the Brick Landing Boating Access Area at 1921 Brick Landing Road SW in Shallotte;
- (16) within 50 yards of Rices Creek Boating Access Area at 797 Gordon Lewis Drive SE in Winnabow; and
- (17) within 50 yards of the Pireway Boating Access Area on Waccamaw River at 9739 Pireway Road NW in Ash.
- (b) Speed Limit. No person shall operate a vessel at greater than no-wake speed within the regulated areas described in Paragraph (a) of this Rule.
- (c) Placement of Markers. The following agencies shall ~~be are the designated agencies for the placement place or place and maintain~~ be are the designated agencies for the placement place or place and maintain ~~of~~ markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers:
- (1) the Board of Aldermen of Varnamtown for the placement in the areas area indicated designated in Subparagraph (a)(1) of this Rule;
  - (2) the Board of Commissioners of Brunswick County for the placement in the areas indicated designated in Subparagraphs (a)(2) through (8) and (a)(11) of this Rule; and
  - (3) the North Carolina Wildlife Resources Commission for the placement and maintenance of area areas indicated designated in ~~Subparagraph~~ Subparagraphs (a)(9)(a)(9), (a)(10), and (a)(12) through (17) of this Rule; and Rule.
  - (4) ~~the Town of Ocean Isle Beach for the area indicated in Subparagraph (a)(10) of this Rule.~~
- (d) *Notwithstanding Paragraphs (a) through (c) of this Rule, no person shall operate a vessel at greater than no-wake speed in the waters of South Jinks Creek in the Town of Sunset Beach, beginning at a line north of the feeder channel, from a point on the west shore at 33.87617 N, 78.49297 W to a point on the east shore at 33.87664 N, 78.49164 W, then southeast to a point on the south shore at 33.87325 N, 78.49033 W, and waters south and west of those lines including the feeder channel, four finger canals, and the bay area. The North Carolina Wildlife Resources Commission is the designated agency for placement and maintenance of markers for this regulated area.*
- Authority G.S. 75A-3; 75A-15.

**15A NCAC 10F .0316 FORSYTH, ROCKINGHAM  
ROCKINGHAM, AND STOKES COUNTIES**

(a) Regulated Areas. This Rule shall apply to the following waters in Forsyth, Rockingham, and Stokes counties:

- (1) Belews Lake within 50 yards of a public boat launching ramp on the lake, and within 50 yards of a bridge crossing on the lake;
- (2) Belews Lake at Humphrey's Ridge Marina and Grill at 473-499 Humphrey Ridge Drive in Stokesdale, east of a line from a point on the north shore at 36.27962 N, 80.03507 W to a point on the south shore at 36.27804 N, 80.03565 W; and
- (3) Belews Lake at Carolina Marina at 548 Shelton Road in Stokesdale, beginning at a line from a point on the shore where the southernmost fuel dock is located, to a point 50 yards west from the shore into the channel, then to the north 50 yards west of the shore of the marina, then to a point on the north shore of the cove at 36.30521 N, 80.01416 W, to include the waters east of the line at the mouth of the cove, where the boat ramp, Dry Stack, and outdoor boat storage facilities are located.

(b) Speed Limit. No person shall operate a vessel at greater than no-wake speed within the regulated areas ~~identified~~ described in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The Boards of Commissioners of Forsyth County, Rockingham ~~County~~ County, and Stokes ~~County~~, or their designees ~~County shall be the designated agencies for placement and maintenance of~~ place and maintain markers implementing this Rule. ~~Markers warning of a no-wake speed zone shall be buoys or floating signs.~~

*Authority G.S. 75A-3; 75A-15.*

**15A NCAC 10F .0338 CALDWELL COUNTY**

(a) Regulated Areas. This Rule shall apply to the following waters in Caldwell County:

- (1) Catawba River;
- (2) Lake ~~Rhodhiss~~; Rhodhiss:
  - (A) within 50 yards of the marina facilities at Castle Bridge Marina, 6131 Castle Bridge Drive in Granite Falls;
  - (B) within 50 yards of the Castle Bridge Boating Access Area, 6131 Connelly Springs Road in Granite Falls; and
  - (C) within 50 yards of the Conley Creek Boating Access Area, 5475 Waterworks Road in Granite Falls.
- (3) Little Gunpowder Lake; and
- (4) Lake Hickory in the City of Hickory. Lake Hickory:
  - (A) within 30 yards of the docks at the Lake Hickory Marina and Boat Rentals, on Limbaugh Lane in the City of Hickory;
  - (B) within 50 yards of the Gunpowder Boating Access Area, at 5450

Hurricane Hill Road in Granite Falls; and  
(C) within 50 yards of the Lovelady Boating Access Area, at 5682 Rocky Mount Road in Granite Falls.

~~(b) Speed Limit Near Ramps. No person shall operate a vessel at greater than no-wake speed within 50 yards of any public boat launching ramp while on the regulated areas described in Paragraph (a) of this Rule.~~

(b) Speed Limit. No person shall operate a vessel at greater than no-wake speed within the regulated areas described in Paragraph (a) of this Rule.

(c) Speed Limit in Mooring Areas. No person shall operate a vessel at greater than no-wake speed ~~while~~ within a marked mooring area on the regulated areas described in Paragraph (a) of this Rule.

~~(d) Specific Speed Zones. Lake Hickory within the boundaries of the City of Hickory. No person shall operate a vessel at greater than no-wake speed within 30 yards of the docks at the Lake Hickory Marina and Boat Rentals on Limbaugh Lane.~~

~~(e)(d) Restricted Swimming Areas. No person operating or responsible for the operation of a vessel shall permit it to enter any a marked public swimming area on the regulated areas described in Paragraph (a) of this Rule.~~

~~(f)(e) Placement of Markers. The Board of Commissioners of Caldwell County and the City of Hickory shall be the designated agency for placement of the markers implementing this Rule, subject to the approval of the United States Army Corps of Engineers. The following agencies shall place or place and maintain markers implementing this Rule, subject to the approval of the United States Coast Guard and United States Army Corps of Engineers:~~

- (1) the Board of Commissioners of Caldwell County shall place the markers implementing Subparagraphs (a)(1) and (a)(3), and Part (a)(2)(A) of this Rule;
- (2) the City of Hickory shall place the markers implementing Part (a)(4)(A) of this Rule; and
- (3) the North Carolina Wildlife Resources Commission shall place and maintain the markers implementing Parts (a)(2)(B), (C), and (a)(4)(B), (C) of this Rule.

*Authority G.S. 75A-3; 75A-15.*

**15A NCAC 10F .0380 TOWN OF RHODHISS**

(a) Regulated Area. This rule shall apply to the waters of Lake Hickory in the Town of Rhodhiss in Burke and Caldwell counties, shore to shore, beginning west of a line 165 yards east of the S.R. 1611 Bridge from a point on the north shore at 35.77322 N, 81.42891 W to a point on the south shore at 35.77179 N, 81.42910 W, westward ending at the Rhodhiss Dam.

(b) Speed Limit. No person shall operate a vessel at greater than no-wake speed within the regulated area described in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The Town of Rhodhiss shall place and maintain the markers implementing this Rule, subject to the approval of the United States Army Corps of Engineers.

Authority G.S. 75A-3; 75A-15.

\*\*\*\*\*

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Wildlife Resources Commission intends to readopt with substantive changes the rules cited as 15A NCAC 10K .0101-.0103.

Link to agency website pursuant to G.S. 150B-19.1(c): https://www.ncwildlife.org/Proposed-Regulations

Proposed Effective Date: February 1, 2024

Public Hearing:

Date: November 14, 2023

Time: 2:00 p.m.

Location: Zoom Meeting. Registration required: https://ncwildlife-org.zoomgov.com/webinar/register/WN\_rUCifjUYTo-K4beSZrCOag. Join by phone toll free: (833) 568-8864. Webinar ID: 160 529 2316.

Reason for Proposed Action: The 10K .0100 Hunter Education Course Rules were determined to be "necessary with substantive public interest" and are required to be readopted as part of the periodic review. Proposed amendments clarify hunter education course and instructor standards to align with the North Carolina General Statutes and current course requirements.

Comments may be submitted to: Rulemaking Coordinator, 1701 Mail Service Center, Raleigh, NC 27699; email regulations@ncwildlife.org

Comment period ends: December 1, 2023

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit a written objection to the Rules Review Commission. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to oah.rules@oah.nc.gov. If you have any further questions concerning the submission of objections to the Commission, please review 26 NCAC 05 .0110 or call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
Local funds affected
Substantial economic impact (>= \$1,000,000)

- Approved by OSBM
No fiscal note required

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10K – HUNTER EDUCATION COURSE

15A NCAC 10K .0101 COURSE REQUIREMENTS

- (a) The Commission shall provide a hunter education Individuals who wish to procure a hunting license, as required by G.S. 113-270.1B, shall attend a Commission-approved basic hunter education course and obtain a certificate of competency.
(b) Commission-approved basic hunter education courses include either an instructor-led course with a minimum of six hours of instruction or a Commission-approved self-paced, independent study option course that instructs on at least the topics identified in Paragraph (b) of this Rule. G.S. 113-270.1A(b). Information on instructor led Commission-approved courses and registration for the self paced study option can be found at ncwildlife.org. is at http://www.ncwildlife.org/Hunting/BeforetheHunt/HunterEducationCourses.aspx. Both the instructor led and self paced study option courses shall meet the standards adopted by the International Hunter Education Association, including all subsequent amendments, found at http://ihea-usa.org/hunting-and-shooting/hunter-education/ihea-standards.
(b) Of the instruction required by Paragraph (a) of this Rule, 60 percent of the time shall be devoted to instruction related to the safe handling of firearms. The remaining course time shall include instruction on hunter responsibility (ethics), wildlife conservation, and wildlife management; and may include wildlife identification, game care, specialty hunting, survival and first aid, water safety, and special concerns (alcohol and drugs, turkey hunting, trapping, all terrain vehicles, and hunting dogs).
(c) The hunter education course shall be administered by an instructor certified by the Wildlife Resources Commission.
(d)(c) The following requirements must be satisfied by the course participant in order to successfully complete a basic hunter education course and be entitled to the issuance of a Certificate of Competency:
(1) complete all of the six hours of instruction in the instructor-led course or all the material contained in the independent study course; and
(2) score a minimum of 70 percent on the final examination; and examination.
(3) review safe firearm handling skills, except current and former military personnel, current and former law enforcement officers, and National Rifle Association certified firearms instructors are exempt from this requirement. Exempt individuals must show current documentation of their exempt status.

Authority G.S. 113-134; 113-270.1A.

15A NCAC 10K .0102 ISSUANCE OF CERTIFICATE OF COMPETENCY

- (a) Upon the conclusion successful completion of a basic hunter safety education course, the instructor shall complete a card for

~~each participant who successfully completed the course in accordance with 15A NCAC 10K Rule .0101 of this Section, and forward the card record to the North Carolina Wildlife Resources a certificate of competency shall be issued by the Commission. Commission for processing.~~

~~(b) After receiving the completed card referred to in Paragraph (a) of this Rule, the Commission shall issue a Certificate of Competency to each participant who successfully completes the course. This certificate shall include:~~

- ~~(1) a certification number;~~
- ~~(2) the participant's name, address, and date of birth;~~
- ~~(3) the hunter safety course instructor's name; and~~
- ~~(4) course completion date.~~

~~(e)(b) The Commission shall maintain permanent files of all successful participants in hunter safety courses who were issued a certificate of competency. Duplicate certificates may be obtained from the Commission. Commission free of charge upon request.~~

~~(c) The Commission may recognize a certificate of competency from another state or province so long as the hunter education course met or exceeded the standards of the International Hunter Education Association, including subsequent amendments and editions, found at ihea-usa.org/resources/#Standards.~~

*Authority G.S. 113-134; 113-270.1A.*

**15A NCAC 10K .0103 INSTRUCTOR CERTIFICATION**

~~(a) Hunter Education Instructors shall be certified by the Commission prior to delivering basic hunter education courses.~~

~~(b) To be eligible for Hunter Safety Education Instructor Certification an individual must shall:~~

- ~~(1) Be be at least 21 years of age upon at the time of application;~~
- ~~(2) Be a graduate of possess a certificate of competency from a Commission-approved Basic Hunter Education Safety Course approved by the Wildlife Resources Commission. Course. Approved courses must satisfy the requirements set out in 15A NCAC~~

~~10K .0101 or be certified by a state or province that meets and or exceeds the requirements set out in 15A NCAC 10K .0101;~~

~~(3) Complete complete and submit to the Commission, the North Carolina Hunter Safety Education Instructors Application; application, available at ncwildlife.org, with the following information:~~

- ~~(A) name, address, email, phone number; and~~
- ~~(B) date of birth.~~

~~(4) Complete complete the 12-hour Commission-led Hunter Safety Education Instructors Course, and course and score 75 80 percent or higher on the written examination. Teachers certified by the North Carolina Department of Public Instruction and persons who have been certified as hunter safety instructors by another state may take an abbreviated course that is less than 12 hours;~~

~~(5) Submit submit to a background investigation including a records check which reveals no with none of the following disqualifying convictions identified: convictions. Disqualifying convictions are listed as follows:~~

- ~~(a)(A) a felony; or felony;~~
- ~~(b)(B) a crime or unlawful act defined as a "Class 1" misdemeanor within the five year five-year period prior to the date of application; or~~

~~(e)(C) any conviction of the game and fish law which would require a mandatory suspension and or revocation of a license as indicated in G.S. 113-276.3 within the three-year three-year period prior to the date of application.~~

*Authority G.S. 113-134; 113-270.1A.*

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**APPROVED RULES**

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*This Section includes a listing of rules approved by the Rules Review Commission followed by the full text of those rules. The rules that have been approved by the RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register are identified by an \* in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

Rules approved by the Rules Review Commission at its meeting on August 17, 2023 Meeting.

**REGISTER CITATION TO THE  
NOTICE OF TEXT**

**SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION**

<u>Administration of Justice Officer Schools</u>	12 NCAC 10B .0702*	37:02 NCR
<u>Qualifications to Act as School Directors</u>	12 NCAC 10B .0705*	37:02 NCR
<u>Reports/Detention Officer Cert Course Presentation Comple...</u>	12 NCAC 10B .0803*	37:02 NCR
<u>Cert/Instructors/Basic Law Enforcement Training Course</u>	12 NCAC 10B .0901*	37:02 NCR
<u>Cert: Instructors for Detention Officer Certification Course</u>	12 NCAC 10B .0903*	37:02 NCR
<u>Professional Lecturer Certification</u>	12 NCAC 10B .0906*	37:02 NCR
<u>Use of Guest Participants</u>	12 NCAC 10B .0910*	37:02 NCR

**ENVIRONMENTAL MANAGEMENT COMMISSION**

<u>Watauga River Basin</u>	15A NCAC 02B .0305*	37:17 NCR
<u>Copies of Referenced Federal Regulations</u>	15A NCAC 02D .0103*	37:14 NCR
<u>Compliance with Emission Control Standards</u>	15A NCAC 02D .0501*	37:14 NCR
<u>Control of Emissions from Log Fumigation Operations</u>	15A NCAC 02D .0546*	37:14 NCR
<u>General Recordkeeping and Reporting Requirements</u>	15A NCAC 02D .0605*	37:14 NCR
<u>Open Burning Without an Air Quality Permit</u>	15A NCAC 02D .1903*	37:14 NCR
<u>Air Curtain Incinerators</u>	15A NCAC 02D .1904*	37:14 NCR
<u>Regional Office Locations</u>	15A NCAC 02D .1905*	37:14 NCR
<u>Public Notice</u>	15A NCAC 02D .2203*	37:14 NCR
<u>Where to Obtain and File Permit Applications</u>	15A NCAC 02Q .0104*	37:14 NCR
<u>Copies of Referenced Documents</u>	15A NCAC 02Q .0105*	37:14 NCR
<u>Payment of Fees</u>	15A NCAC 02Q .0206*	37:14 NCR
<u>Applications</u>	15A NCAC 02Q .0304*	37:14 NCR
<u>Application Submittal Content</u>	15A NCAC 02Q .0305*	37:14 NCR
<u>Public Participation Procedures</u>	15A NCAC 02Q .0307*	37:14 NCR
<u>Application Submittal Content</u>	15A NCAC 02Q .0505*	37:14 NCR
<u>Application</u>	15A NCAC 02Q .0507*	37:14 NCR
<u>Permit Content</u>	15A NCAC 02Q .0508*	37:14 NCR
<u>Public Notice and Opportunity for Public Hearing</u>	15A NCAC 02Q .0710*	37:14 NCR

**COASTAL RESOURCES COMMISSION**

<u>Structural Accessways Over Frontal Dunes Exempted</u>	15A NCAC 07K .0207*	37:14 NCR
<u>Definitions</u>	15A NCAC 07M .0602	37:15 NCR

**WILDLIFE RESOURCES COMMISSION**

<u>Big Game Harvest Reporting</u>	15A NCAC 10B .0113*	37:19 NCR
<u>Application for Certificate of Vessel Number</u>	15A NCAC 10F .0102*	37:19 NCR
<u>Certificate of Number</u>	15A NCAC 10F .0104*	37:19 NCR
<u>Temporary Certificate of Number</u>	15A NCAC 10F .0109*	37:19 NCR
<u>Dare County</u>	15A NCAC 10F .0310*	37:19 NCR

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*APPROVED RULES*

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<u>Cube Hydro Carolinas Safety Zones and Restricted Zones Areas</u>	15A NCAC 10F .0374*	37:19 NCR
<b>LOCAL GOVERNMENT COMMISSION</b>		
<u>General Information</u>	20 NCAC 03 .0701	37:19 NCR
<u>Definition of Terms</u>	20 NCAC 03 .0702	37:19 NCR
<u>Minimum Fund Standards</u>	20 NCAC 03 .0703	37:19 NCR
<u>Requirements for the RFP</u>	20 NCAC 03 .0704	37:19 NCR
<u>Issuance of the RFP</u>	20 NCAC 03 .0705	37:19 NCR
<u>Certification and Termination of Manager</u>	20 NCAC 03 .0706	37:19 NCR
<u>Termination for Cause</u>	20 NCAC 03 .0707	37:19 NCR
<u>Review of Manager</u>	20 NCAC 03 .0708	37:19 NCR
<u>Delegation of Authority</u>	20 NCAC 03 .0709	37:19 NCR
<u>General Information</u>	20 NCAC 03 .0710*	37:19 NCR
<u>Definition of Terms</u>	20 NCAC 03 .0711*	37:19 NCR
<u>Minimum Fund Standards</u>	20 NCAC 03 .0712*	37:19 NCR
<u>Certification of a Fund</u>	20 NCAC 03 .0713*	37:19 NCR
<u>Review of Fund and Attestation</u>	20 NCAC 03 .0714*	37:19 NCR
<u>Termination of Certification</u>	20 NCAC 03 .0715*	37:19 NCR
<b>CERTIFIED PUBLIC ACCOUNTANT EXAMINERS, BOARD OF</b>		
<u>Filing of Examination Applications and Fees</u>	21 NCAC 08F .0103*	37:20 NCR
<u>Conditioning Requirements</u>	21 NCAC 08F .0105	37:20 NCR
<u>Work Experience Required of Candidates for CPA Certification</u>	21 NCAC 08F .0401	37:20 NCR
<u>Education Required of Candidates for CPA Certification</u>	21 NCAC 08F .0410*	37:20 NCR
<u>Reciprocal Certificates</u>	21 NCAC 08H .0101	37:20 NCR
<u>Retired Status - Change of Status</u>	21 NCAC 08J .0112*	37:20 NCR
<u>Peer Review Requirements</u>	21 NCAC 08M .0105	37:20 NCR
<u>Confidentiality</u>	21 NCAC 08N .0205	37:20 NCR
<u>Accounting Principles</u>	21 NCAC 08N .0209	37:20 NCR
<u>Responsibilities in Tax Practice</u>	21 NCAC 08N .0211	37:20 NCR
<u>International Financial Accounting Standards</u>	21 NCAC 08N .0215	37:20 NCR
<u>Consulting Services Standards</u>	21 NCAC 08N .0304	37:20 NCR
<u>Retention of Client Records</u>	21 NCAC 08N .0305	37:20 NCR
<u>CPA Firm Names</u>	21 NCAC 08N .0307	37:20 NCR
<u>Valuation Services Standards</u>	21 NCAC 08N .0308	37:20 NCR
<u>Personal Financial Planning Services</u>	21 NCAC 08N .0309	37:20 NCR
<u>Auditing Standards</u>	21 NCAC 08N .0403	37:20 NCR
<u>Accounting and Review Services Standards</u>	21 NCAC 08N .0404	37:20 NCR
<u>Governmental Accounting Standards</u>	21 NCAC 08N .0405	37:20 NCR
<u>Attestation Standards</u>	21 NCAC 08N .0406	37:20 NCR
<u>Government Auditing Standards</u>	21 NCAC 08N .0409	37:20 NCR
<u>International Standards on Auditing</u>	21 NCAC 08N .0410	37:20 NCR
<u>Audits Subject to the Single Audit Act</u>	21 NCAC 08N .0411	37:20 NCR
<u>Forensic Services</u>	21 NCAC 08N .0412	37:20 NCR
<b>OPTOMETRY, BOARD OF EXAMINERS IN</b>		
<u>Application for License Renewal</u>	21 NCAC 42B .0304*	37:20 NCR

**PHARMACY, BOARD OF**

<u>Limited Service Permits</u>	21 NCAC 46 .1616*	37:20 NCR
<u>Direct-to-Patient Delivery Systems</u>	21 NCAC 46 .1821*	37:20 NCR

**VETERINARY MEDICAL BOARD**

<u>Fees</u>	21 NCAC 66 .0108	37:21 NCR
<u>Definitions</u>	21 NCAC 66 .0901	37:21 NCR
<u>Reinstatement After Revocation of Facility Permit</u>	21 NCAC 66 .0905	37:21 NCR

**ADMINISTRATIVE HEARINGS, OFFICE OF**

<u>Consent Order: Settlement: Stipulation</u>	26 NCAC 03 .0106	37:19 NCR
<u>Medicaid Hearing Procedures Rules</u>	26 NCAC 03 .0401*	37:21 NCR

*The following rules are subject to Legislative Review:*

**VETERINARY MEDICAL BOARD**

<u>Minimum Standards for Continuing Education</u>	21 NCAC 66 .0206*	37:21 NCR
<u>Veterinary Facility Permits</u>	21 NCAC 66 .0902*	37:21 NCR
<u>Supervising Veterinarian</u>	21 NCAC 66 .0903*	37:21 NCR
<u>Discipline Veterinary Facility Permits</u>	21 NCAC 66 .0904	37:21 NCR

**TITLE 12 - DEPARTMENT OF JUSTICE**

**12 NCAC 10B .0702 ADMINISTRATION OF JUSTICE OFFICER SCHOOLS**

The rules covering the administration of Criminal Justice Schools and training programs or courses of instruction, codified as Title 12, Subchapter 9B, Section .0200 of the North Carolina Administrative Code, effective and previously adopted by the North Carolina Criminal Justice Education And Training Standards Commission are hereby incorporated by reference and shall automatically include any later amendments and editions of the incorporated material to apply to actions of the North Carolina Sheriffs' Education and Training Standards Commission. This Rule is not applicable to any Detention Officer Certification Course or Telecommunicator Certification Course. Copies of the incorporated materials may be obtained at no cost from the Criminal Justice Standards Division, North Carolina Department of Justice, 1700 Tryon Park Drive, Post Office Drawer 149, Raleigh, North Carolina 27692, or at <http://ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Criminal-Justice-Education-and-Training-Standards/Training-Certification-Programs.aspx>.

*History Note: Authority G.S. 17E-4; Eff. January 1, 1989; Amended Eff. January 1, 1996; January 1, 1990; Temporary Amendment Eff. March 1, 1998; Amended Eff. November 1, 2013; August 1, 1998; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018; Amended Eff. November 1, 2023.*

**12 NCAC 10B .0705 QUALIFICATIONS TO ACT AS SCHOOL DIRECTORS**

Any person designated to act as, or who performs the duties of, a school director in the delivery or presentation of any commission-accredited Detention Officer Certification Course shall maintain the following criteria to continuously serve as a school director.

- (1) Submit a written designation as school director executed by the executive officer of the institution or agency currently accredited, or which may be seeking accreditation, by the Commission to make presentation of accredited training programs;
- (2) Be certified as a criminal justice instructor by the North Carolina Criminal Justice Education and Training Standards Commission;
- (3) Attend or must have attended the most current offering of the school director's orientation as developed and presented by the Commission staff;
- (4) Attend or must have attended the most current offering of the school director's conference as presented by the Commission staff and staff of the North Carolina Criminal Justice Education and Training Standards Commission and Standards Division;
- (5) Not have had any type of certification issued from this Commission, from the North Carolina Criminal Justice Education and Training Standards Commission, or from any commission, agency, or board established to certify pursuant to said commission, agency or

boards' standards, which was revoked, suspended or denied and such period of sanction is still in effect at the time of designation;

- (6) Perform the duties and responsibilities of a school director as specifically required in Rule .0704;
- (7) Maintain an updated copy of the "Detention Officer Certification Training Manual" assigned to each accredited school; and
- (8) Ensure compliance with the Commission's accreditation requirements as set forth in 12 NCAC 10B .0703 and .0802.

*History Note: Authority G.S. 17E-4; Eff. January 1, 1989;*

*Amended Eff. August 1, 2002; August 1, 1998; January 1, 1996; January 1, 1992; January 1, 1991; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018; Amended Eff. November 1, 2023.*

**12 NCAC 10B .0803 REPORTS/DETENTION OFFICER CERT COURSE PRESENTATION/COMPLETION**

(a) Each presentation of any Detention Officer Certification Course shall be reported to the Commission as follows:

- (1) After acquiring accreditation for the course and before commencing each delivery of the course, the school shall, no less than 30 days prior to the scheduled delivery, notify the Division of the school's intent to offer the training course by submitting a Pre-Delivery Report of Training Course Presentation (Form F-7A); and
- (2) Upon completing delivery of the accredited course, and not more than ten days after receiving from the Commission's representative the Report of Examination Scores, the school shall notify the Division regarding the progress and achievement of each enrolled trainee by submitting a Post-Delivery Report of Training Course Presentation (Form F-7B).

(b) Forms:

- (1) Form F-7A and F-7A-T, Pre-Delivery Report of Training Course Presentation, is completed by the institution or agency delivering Detention Officer and Telecommunicator Training Courses and consists of information on the course delivery location, school director, class schedule, anticipated date of the State Comprehensive Exam, and any planned instructional hours exceeding the minimum requirements. Form F-7A is utilized for Detention Officer courses and Form F-7A-T is utilized for Telecommunicator courses.
- (2) Form F-7B and F-7B-T, Post-Delivery Report of Training Course Presentation, is completed by the institution or agency delivering Detention Officer and Telecommunicator

Training Courses and consists of information on any substitutions of instructors as originally reported on the Pre-Delivery Report, any trainees who were not recommended for the state exam due to withdrawal or deficiencies, and the students who participated in and completed the course. Form F-7B is utilized for Detention Officer courses and Form F-7B-T is utilized for Telecommunicator courses.

*History Note: Authority G.S. 17E-4; 17E-7; Eff. January 1, 1989; Amended Eff. January 1, 1996; January 1, 1992; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018; Amended Eff. November 1, 2023.*

**12 NCAC 10B .0901 CERT/INSTRUCTORS/BASIC LAW ENFORCEMENT TRAINING COURSE**

The rules covering the certification of instructors, codified as Title 12, Subchapter 9B, Section .0300 of the North Carolina Administrative Code, and adopted by the North Carolina Criminal Justice Education and Training Standards Commission, are hereby incorporated by reference, and shall automatically include any later amendments and editions of the referenced materials, to apply to actions of the North Carolina Sheriffs' Education and Training Standards Commission. This Rule is not applicable to any Detention Officer Certification Course or Telecommunicator Certification Course. Copies of the publication may be obtained from the Office of Administrative Hearings, Rules Division website <http://www.ncoah.com/rules>.

*History Note: Authority G.S. 17E-4; Eff. January 1, 1989; Amended Eff. January 1, 2013; January 1, 1996; January 1, 1994; June 1, 1992; January 1, 1992; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018; Amended Eff. November 1, 2023.*

**12 NCAC 10B .0903 CERT: INSTRUCTORS FOR DETENTION OFFICER CERTIFICATION COURSE**

(a) Any person participating in any commission-certified Detention Officer Certification Course as an instructor, teacher, professor, lecturer, or other participant making presentations to the class shall first be certified by the Commission as an instructor pursuant to Rules .0905, .0907, and .0909 of this Subchapter.

(b) The Commission shall certify Detention Officer Certification Course instructors under the following categories:

- (1) Detention Officer Instructor Certification;
- (2) Professional Lecturer Certification; or
- (3) Limited Lecturer Certification as outlined in Rules .0904, .0906 and .0908 of this Section.

(c) In addition to all other requirements of this Section, all instructors certified by the Commission to teach in any commission-certified Detention Officer Certification Course shall attend and complete any instructor training updates related to curriculum content and delivery as may be offered by the Commission approved curriculum developer and within the time

period as specified by the Commission approved curriculum developer.

*History Note: Authority G.S. 17E-4;  
Eff. January 1, 1989;  
Amended Eff. January 1, 2005; August 1, 1998; January 1, 1996;  
January 1, 1990;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018;  
Amended Eff. November 1, 2023.*

**12 NCAC 10B .0906 PROFESSIONAL LECTURER CERTIFICATION**

(a) The Commission may issue Professional Lecturer Certification to a licensed attorney-at-law or a person with a law degree to teach "Legal Aspects of Jail Management and Administration" or other approved Detention Officer Certification Course legal block in any Detention Officer Certification Course if they apply and meet the criteria set out in Rule .0907 of this Subchapter.

(b) To be eligible for such certification an applicant shall present documentary evidence demonstrating that the applicant has:

- (1) graduated from an accredited law school;
- (2) obtained the endorsement of a commission recognized school director who shall:
  - (A) recommend the applicant for certification as a professional lecturer; and
  - (B) describe the applicant's expected participation, topical areas, duties and responsibilities.

*History Note: Authority G.S. 17E-4;  
Eff. January 1, 1989;  
Amended Eff. January 1, 1996; January 1, 1994; January 1, 1992;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018;  
Amended Eff. November 1, 2023.*

**12 NCAC 10B .0910 USE OF GUEST PARTICIPANTS**

Instructors certified pursuant to 12 NCAC 10B .0908 and .0909 shall be the primary presenter at each class session of every offering of any Detention Officer Certification Course. A guest participant in a class session shall only be used to complement the instructor, and the instructor shall have direct on-site supervision of the guest participants.

*History Note: Authority G.S. 17E-4;  
Eff. January 1, 1992;  
Amended Eff. August 1, 1998; January 1, 1996;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018;  
Amended Eff. November 1, 2023.*

**15A NCAC 02B .0305 WATAUGA RIVER BASIN**

(a) Classifications assigned to the waters within the Watauga River Basin are set forth in the Watauga River Basin Classification Schedule, which may be inspected at the following places:

- (1) the Internet at <https://deq.nc.gov/about/divisions/water-resources/water-planning/classification-standards/river-basin-classification> and the following offices of the North Carolina Department of Environmental Quality:
  - (A) Asheville Regional Office  
2090 US Highway 70  
Swannanoa, NC 28711-8211;
  - (B) Winston-Salem Regional Office  
450 West Hanes Mill Road, Suite 300  
Winston-Salem, NC 27105; and
  - (C) Division of Water Resources  
Central Office  
512 North Salisbury Street  
Raleigh, NC 27604.

(b) Unnamed streams entering the State of Tennessee are classified "C."

(c) The Watauga River Basin Classification Schedule was amended effective:

- (1) August 12, 1979;
- (2) February 1, 1986;
- (3) October 1, 1987;
- (4) August 1, 1989;
- (5) August 1, 1990;
- (6) December 1, 1990;
- (7) April 1, 1992;
- (8) August 3, 1992;
- (9) February 1, 1993;
- (10) April 1, 1994;
- (11) August 1, 1998;
- (12) November 1, 2007; and
- (13) September 1, 2023.

(d) The Watauga River Basin Classification Schedule was amended effective July 1, 1989, as follows:

- (1) Dutch Creek Index No. 8-11 was reclassified from Class C-trout to Class B-trout.
- (2) Pond Creek Index No. 8-20-2 from water supply intake located just above Tamarack Road to Beech Creek and tributary waters were reclassified from Class WS-III to C.

(e) The Watauga River Basin Classification Schedule was amended effective December 1, 1990, with the reclassification of the Watauga River from the US Highway 321 bridge to the North Carolina/Tennessee state line from Class C to Class B.

(f) The Watauga River Basin Classification Schedule was amended effective April 1, 1992, with the reclassification of Pond Creek from Classes WS-III and C to Classes WS-III Trout and C Trout.

(g) The Watauga River Basin Classification Schedule was amended effective August 3, 1992, as follows:

- (1) Class WS-I, WS-II or WS-III waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply

**TITLE 15A - DEPARTMENT OF ENVIRONMENTAL QUALITY**

protection rules 15A NCAC 02B .0100 through .0300, which became effective on August 3, 1992.

- (2) Additional waters classified as Class C were reclassified to a WS classification and additional waters classified as Class B were reclassified to a Class WS & B classification due to proximity and linkage to water supply waters.
- (3) Additional Class WS-I, WS-II, or WS-III waters were reclassified to remove the WS classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(h) The Watauga River Basin Classification Schedule was amended effective February 1, 1993, with the reclassification of Boone Fork Index No. 8-7 and tributary waters from Classes C Tr HQW and C HQW to Classes C Tr ORW and C ORW.

(i) The Watauga River Basin Classification Schedule was amended effective April 1, 1994, with the reclassification of the Elk River from Peavine Branch to the North Carolina/Tennessee state line Index No. 8-22-(3) from Class C Tr to Class B Tr.

(j) The Watauga River Basin Classification Schedule was amended effective August 1, 1998, with the reclassification of East Fork Pond Creek from its source to the backwater of Santis Lake, Index No. 8-20-2-1.5 from Class WS-II Tr to Class WS-III Tr; the reclassification of West Fork Pond Creek (Santis Lake) Index No. 8-20-2-1-(2) from the backwaters of Santis Lake to Pond Creek from WS-II Tr CA to WS-III Tr CA; and the reclassification of the connecting stream of Lake Coffey Index No. 8-20-2-2 from the dam at Lake Coffey to Pond Creek from WS-II Tr CA to C Tr.

(k) The Watauga River Basin Classification Schedule was amended effective November 1, 2007, with the reclassification of the Beech Creek Bog near Beech Creek Index No. 8-20 to Class WL UWL. The North Carolina Division of Water Resources maintains a Geographic Information Systems data layer of the UWL.

(l) The Watauga River Basin Classification Schedule was amended effective September 1, 2023, with the reclassification of the following waterbodies:

- (1) Green Ridge Branch Index No. 8-3 and tributary waters from the source to Watauga River from Class C to Class C ORW;
- (2) Harrison Branch Index No. 8-10-1 and tributary waters from the source to Laurel Fork from Class C to Class C ORW;
- (3) The portion of Upper Laurel Fork Index No. 8-10-3 and tributary waters from source to SR103 from Class C to Class C ORW;
- (4) The portion of Dutch Creek Index No. 8-12-(0.5) and tributary waters from source to Pigeonroost Creek from Class B Tr to Class B Tr ORW;
- (5) Craborchard Creek Index No. 8-12-3 and tributary waters from source to Dutch Creek from Class C Tr to Class C Tr HQW;

- (6) The portion of South Fork Ellison Branch Index No. 8-15-1-2 and tributary waters from source to U.S. 421 from Class C to Class C ORW;
- (7) Laurel Creek Index No. 8-17 and tributary waters from source to Watauga River from Class C Tr to Class C Tr ORW, including Worley Creek Index No. 8-17-1 from source to Laurel Creek from Class C Tr to Class Tr ORW and Spice Branch (Creek) Index No. 8-17-2 from source to Laurel Creek from Class C to Class C ORW;
- (8) The portion of Little Beaverdam Creek Index No. 8-19-2 and tributary waters from source to Fork Branch from Class C Tr to Class C Tr HQW, including Jones Branch Index No. 8-19-2-1 from source to Little Beaverdam Creek from Class C to Class C HQW;
- (9) West Fork Rube Creek Index No. 8-19-3-2 and tributary waters from source to Rube Creek from Class C to Class C HQW;
- (10) The portion of Stone Mountain Branch Index No. 8-2 and tributary waters from source to unnamed tributary located approximately 350 feet southwest of the intersection of SR 1206 and SR 1201 from Class C to Class C HQW; and
- (11) Shawnehaw Creek Index No. 8-22-7 and tributary waters from source to Mill Pond, Elk River from Class C Tr to Class C Tr ORW.

*History Note: Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1); Eff. February 1, 1976; Amended Eff. November 1, 2007; August 1, 1998; April 1, 1994; February 1, 1993; August 3, 1992; April 1, 1992; Readopted Eff. November 1, 2019; Amended Eff. September 1, 2023.*

**15A NCAC 02D .0103 COPIES OF REFERENCED FEDERAL REGULATIONS**

Copies of the Code of Federal Regulations sections referred to in this Subchapter may be obtained free of charge online at <https://www.govinfo.gov/app/collection/cfr/>. Copies of referenced rules are also available for public inspection at Department of Environmental Quality regional offices upon request. The contact information for the regional offices is provided on the Division of Air Quality website at <https://deq.nc.gov/about/divisions/air-quality/regional-offices>.

*History Note: Authority G.S. 143-215.3; 150B-21.6; Eff. December 1, 1976; Amended Eff. December 1, 2005; December 1, 1992; August 1, 1991; July 1, 1988; July 1, 1987; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 5, 2016; Amended Eff. September 1, 2023; January 1, 2018.*

**15A NCAC 02D .0501 COMPLIANCE WITH EMISSION CONTROL STANDARDS**

(a) Purpose and Scope. The purpose of this Rule is to assure compliance with emission control standards found in this Section. This Rule shall apply to all air pollution sources, both combustion and non-combustion.

(b) New sources shall be in compliance prior to beginning operations.

(c) The owner or operator of an air pollution source shall operate or control the source in a manner to meet emission standards in this Section and not cause the ambient air quality standards pursuant to 15A NCAC 02D .0400 to be exceeded at any point beyond the premises on which the source is located. When controls more stringent than those named in the applicable emission standards in this Section are required to prevent violation of the ambient air quality standards or are required to create an offset, the permit shall contain a condition requiring these controls.

(d) The Bubble Concept. As provided in this Paragraph, a facility with multiple emission sources or multiple facilities within the same area may choose to meet the total emission limitation for a given pollutant through a different mix of controls than those required by the rules in 15A NCAC 02D .0500 or .0900.

(1) In order for this mix of alternative controls to be permitted, the Director shall determine that the following conditions are met:

- (A) Sources pursuant to which 15A NCAC 02D .0524, .0530, .0531, .1110, or .1111, the federal New Source Performance Standards (NSPS), the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), regulations established pursuant to Section 111(d) of the federal Clean Air Act, or state or federal Prevention of Significant Deterioration (PSD) requirements apply shall have emissions no larger than if there were not an alternative mix of controls;
- (B) The facility or facilities is located in an attainment area, an unclassifiable area, or in an area that has been demonstrated to be attainment by the statutory deadlines with reasonable further progress toward attainment for those pollutants being considered;
- (C) All of the emission sources affected by the alternative mix are in compliance with applicable regulations or are in compliance with established compliance agreements; and
- (D) The review of an application for the proposed mix of alternative controls and the enforcement of the resulting permit shall not require expenditures of State funds in excess of five times that which would otherwise be required for the review and

enforcement of permits without an alternative mix of controls.

(2) The owners or operators of the facility or facilities shall demonstrate the alternative mix of controls is equivalent in total allowed emissions, reliability, enforceability, and environmental impact to the aggregate of the individual emission standards to which the facility would be subject without the alternative mix of controls; and

- (A) that the alternative mix approach does not interfere with the attainment and maintenance of the ambient air quality standards and does not interfere with the Prevention of Significant Deterioration (PSD) program, which shall include modeled calculations of the amount, if any, of PSD increment consumed or created as defined in Clean Air Act Section 163;
- (B) that the alternative mix approach conforms with reasonable further progress requirements as defined in Clean Air Act Section 171(1) if the source is located in a nonattainment area;
- (C) that the emissions pursuant to the alternative mix approach are quantifiable, and emission trades among the sources involved in the alternative mix approach are equivalent; and
- (D) that the pollutants controlled pursuant to the alternative mix approach are of the same criteria pollutant categories, except that emissions of criteria pollutants that contain hazardous pollutants and are used in alternative emission control strategies are subject to the limitations as defined in 44 Fed. Reg. 71784 (December 11, 1979), Subdivision D.1.c.ii. The Federal Register referenced in this Part is incorporated by reference and does not include subsequent amendments or editions. A copy of 44 Fed. Reg. 71784 may be obtained free of charge and found online at <https://www.govinfo.gov/content/pkg/FR-1979-12-11/pdf/FR-1979-12-11.pdf>.

The demonstrations of equivalence shall be performed with at least the same level of detail as State Implementation Plan (SIP) demonstration of attainment for the area. A copy of the SIPs may be found on the Division of Air Quality (DAQ) website at <https://deq.nc.gov/about/divisions/air-quality/air-quality-planning/state->

implementation-plans. If the facility involves another facility in the alternative strategy, it shall complete a modeling demonstration to ensure that air quality is protected. Demonstrations of equivalency shall take into account differences in the level of reliability of the control measures or other uncertainties.

- (3) The emission rate limitations or control techniques of each source within the facility or facilities subjected to the alternative mix of controls shall be specified in the facility's permit or facilities' permits.
- (4) Compliance schedules and enforcement actions shall not be affected because an application for an alternative mix of controls is being prepared or is being reviewed.
- (5) The Director may waive or reduce requirements in this Paragraph up to the extent allowed by the Emissions Trading Policy Statement published in the Federal Register of April 7, 1982, pages 15076-15086, provided that the analysis required by Paragraph (e) of this Rule supports the waiver or reduction of requirements. The Federal Register referenced in this Subparagraph is incorporated by reference and does not include subsequent amendments or editions.

(e) In a permit application for an alternative mix of controls pursuant to Paragraph (d) of this Rule, the owner or operator of the facility shall demonstrate the proposal is equivalent to the existing requirements of the SIP in total allowed emissions, enforceability, reliability, and environmental impact. The Director shall provide for public notice with an opportunity to request a public hearing following the procedures pursuant to 15A NCAC 02Q .0300 or .0500, as applicable.

- (1) If a permit containing these conditions is issued pursuant to 15A NCAC 02Q .0300, it shall become a part of the state implementation plan (SIP) as an appendix available for inspection as specified in 15A NCAC 02Q .0105. Until the U.S. Environmental Protection Agency (EPA) approves the SIP revision embodying the permit containing an alternative mix of controls, the facility shall continue to meet the otherwise applicable existing SIP requirements.
- (2) If a permit containing these conditions is issued pursuant to 15A NCAC 02Q .0500 it shall be available for inspection as specified in 15A NCAC 02Q .0105. Until the EPA approves the Title V permit containing an alternative mix of controls, the facility shall continue to meet the otherwise applicable existing SIP requirements.

The revision shall be submitted for approval by the EPA on the basis of the revision's consistency with EPA's "Policy for Alternative Emission Reduction Options Within State Implementation Plans" as promulgated in the Federal Register of December 11, 1979, pages 71780-71788, and subsequent rulings.

(f) If the owner or operator of a combustion or noncombustion source or control equipment subject to the requirements of this

Section is required to demonstrate compliance with a rule in this Section, source testing procedures pursuant to 15A NCAC 02D .2600 shall be used.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. February 1, 1976; Amended Eff. August 1, 1991; October 1, 1989; Temporary Amendment Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is sooner; Amended Eff. June 1, 2008; April 1, 2001; April 1, 1999; July 1, 1996; February 1, 1995; July 1, 1994; Readopted Eff. November 1, 2020; Amended Eff. September 1, 2023.*

**15A NCAC 02D .0546 CONTROL OF EMISSIONS FROM LOG FUMIGATION OPERATIONS**

(a) Purpose. The purpose of this Rule is to establish emission control requirements for hazardous air pollutants and toxic air pollutants from log fumigation operations.

(b) Definitions. For the purpose of this Rule, the following definitions and definitions in this Subchapter or 15A NCAC 02Q apply:

- (1) "Bulk or tarpaulin log fumigation" means the fumigation of logs that are placed in piles on an impermeable surface and covered with a weighted-down tarpaulin.
- (2) "Chamber log fumigation" means the fumigation of logs inside a sealed building or structure that is specifically used for fumigation. Chambers used for fumigation may be either atmospheric or vacuum type.
- (3) "Container log fumigation" means the fumigation of logs inside a container where the doors of the container are closed and sealed.
- (4) "Fumigant" means the hazardous air pollutant or toxic air pollutant that is used to eliminate the pests within the logs.
- (5) "Fumigation operation" means the period of time that the fumigant is injected and retained in the container, chamber, or bulk piles for the purposes of treating the logs for insects and other pests to prevent the transfer of exotic organisms.
- (6) "Hazardous air pollutant" means a pollutant listed under Section 112(b) of the federal Clean Air Act in 42 U.S.C. 7412(b).
- (7) "Public right-of-way" means an area where people may reasonably be expected to be present for any part of a 24-hour period.
- (8) "Toxic air pollutant" means a carcinogen, chronic toxicant, acute systemic toxicant, or acute irritant that is listed in 15A NCAC 02D .1104.

(c) Applicability. This Rule shall apply to new, existing, and modified bulk, chamber, and container log fumigation operations that use a hazardous air pollutant or toxic air pollutant as a fumigant.

(d) Emission Control Requirements. The owner or operator of a log fumigation operation shall comply with the Toxic Air Pollutant Guidelines specified in 15A NCAC 02D .1104 and follow the procedures specified in 15A NCAC 02D .1106, 15A NCAC 02Q .0709, and .0710.

(e) The owner or operator shall post signs notifying the public of fumigation operations. The signs shall be visible and legible to the public at the fence or property line closest to a public right-of-way. The signs shall remain in place permanently and shall conform to the format for placards mandated by the federally approved fumigant label.

(f) Monitoring, Recordkeeping, and Reporting. The owner or operator of a bulk, chamber, or container log fumigation operation shall comply with the requirements pursuant to 15A NCAC 02D .0600 and the following requirements:

- (1) The owner or operator shall send an initial notification of commencement of operations to the Division of Air Quality regional office within 15 days of initial fumigation start-up.
- (2) The owner or operator shall submit quarterly summary reports, signed by the permittee or the authorized responsible official, of the monitoring and recordkeeping activities. Within 30 days after the end of the calendar year quarter, reports shall be postmarked or received by the Division in accordance with 15A NCAC 02D .0605(i). The report shall contain the following:
  - (A) the company name, address, and facility ID number;
  - (B) the calendar year quarter represented by the report;
  - (C) the daily and total fumigant usage in pounds for the quarter;
  - (D) a summary of the monitoring data required by the permit that was collected during the quarter; and
  - (E) a summary of deviations from the monitoring parameters or allowable operating levels established in the permit.

(g) Compliance Schedule. The owner or operator of an existing log fumigation operation subject to this Rule shall achieve compliance within 60 days after the Rule is effective or in accordance with an alternate compliance schedule approved by the Director. In establishing an alternate compliance schedule, the Director shall consider whether the compliance approach chosen by the facility involves the purchase and installation of a control device. New and modified facilities shall achieve compliance with this Rule upon start-up.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4); 143-215.107(a)(5); Eff. November 1, 2020; Amended Eff. September 1, 2023.*

**15A NCAC 02D .0605 GENERAL RECORDKEEPING AND REPORTING REQUIREMENTS**

(a) The owner or operator of a source subject to a requirement of Subchapters 02D or 02Q of this Chapter shall maintain:

- (1) records detailing malfunctions pursuant to 15A NCAC 02D .0535;
- (2) records of testing conducted pursuant to rules in Subchapter 02D;
- (3) records of monitoring conducted pursuant to Subchapters 02D or 02Q of this Chapter;
- (4) records detailing activities relating to compliance schedules in this Subchapter; and
- (5) for unpermitted sources, records needed to determine compliance with rules in Subchapters 02D or 02Q of this Chapter.

(b) The permit shall specify:

- (1) the type of monitoring required and the frequency of the monitoring;
- (2) the type of records to be maintained; and
- (3) the type of reports to be submitted and the frequency of submitting these reports needed to determine compliance with rules in Subchapters 02D or 02Q of this Chapter or with an emission standard or permit condition.

(c) The Director may require the owner or operator of the source subject to the requirements in Subchapters 02D or 02Q of this Chapter to submit to the Director information needed to determine the compliance status of the source.

(d) The owner or operator of a source of excess emissions that last for more than four hours and that results from a malfunction, a breakdown of process or control equipment, or other abnormal conditions shall report excess emissions in accordance with the requirements of 15A NCAC 02D .0535.

(e) Copies of records and reports required to demonstrate compliance with the requirements of 15A NCAC 02D .0600 shall be retained by the owner or operator for a period of two years after the date that the record was made or the report submitted, except that the retention period shall be extended if needed to comply with other State or federal requirements.

(f) Records and reports required to demonstrate compliance with the requirements of 15A NCAC 02D .0600 shall be made available to personnel of the Division for inspection.

(g) The owner or operator of a source subject to the requirements of 15A NCAC 02D .0600 shall comply with the requirements of 15A NCAC 02D .0600 at his or her own cost.

(h) No person shall falsify information required by a rule in Subchapter 02D or a permit issued pursuant to Subchapter 02Q. No person shall knowingly submit falsified information required by a rule in Subchapter 02D or a permit issued pursuant to Subchapter 02Q of this Chapter.

(i) Reports, notifications, records, or other documentation required by 15A NCAC 02D and 02Q to be provided to the Division or a regional office shall be submitted as follows:

- (1) Except as specified in Subparagraph (2) of this Paragraph, submit the documents in hard copy format to the Director, Division of Air Quality, 1641 Mail Service Center, Raleigh, North Carolina 27699-1641, or regional office in accordance with 15A NCAC 02D .0103.

- (2) After the Division makes available a system for receiving electronic submittals, as identified in 15A NCAC 02Q .0104(c)(1), documents may be submitted in electronic format through the electronic reporting system in lieu of the procedures in Subparagraph (1) of this Paragraph.

- (2) The open burning for land clearing or right-of-way maintenance if the following conditions are met:

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(4); Eff. February 1, 1976; Amended Eff. January 1, 2007; April 1, 1999; July 1, 1984; June 18, 1976; Readopted Eff. November 1, 2019; Amended Eff. September 1, 2023.*

**15A NCAC 02D .1903 OPEN BURNING WITHOUT AN AIR QUALITY PERMIT**

(a) Open burning is prohibited except open burning allowed pursuant to Paragraph (b) of this Rule or 15A NCAC 02D .1904. Except as allowed pursuant to Subparagraphs (b)(3) through (b)(9) of this Rule, open burning shall not be initiated in a county that the Department or the Forsyth County Office of Environmental Assistance and Protection, has forecasted to be in an Air Quality Action Day Code "Orange" or above during the 24-hour time period covered by that Air Quality Action Day.

(b) The following types of open burning are permissible without an air quality permit.

- (1) The open burning of leaves, logs, stumps, tree branches, or yard trimmings, if the following conditions are met:
- (A) the material burned originates on the premises of private residences and is burned on those premises and does not include material collected from multiple private residences and combined for burning;
  - (B) there are no public pickup services available;
  - (C) non-vegetative materials, such as household garbage, treated or coated wood, or any other synthetic materials are not burned;
  - (D) the burning is initiated no earlier than 8:00 a.m. and no additional combustible material is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the following day;
  - (E) the burning does not create a nuisance; and
  - (F) material is not burned when the North Carolina Forest Service or other government agencies have banned burning for that area.

The burning of logs or stumps of any size shall not be considered to create a nuisance for purposes of the application of the open burning air quality permitting exception described in this Subparagraph;

- (A) The wind direction at the time that the burning is initiated and the wind direction as forecasted by the National Weather Service at the time that the burning is initiated are away from any area, including public roads within 250 feet of the burning as measured from the edge of the pavement or other roadway surface, which may be affected by smoke, ash, or other air pollutants from the burning;

- (B) The location of the burning is at least 500 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property where the burning is conducted. The regional office supervisor may grant exceptions to the setback requirements if:

- (i) a signed, written statement waiving objections to the open burning associated with the land clearing operation is obtained and submitted to, and the exception granted by, the regional office supervisor before the burning begins from a resident or an owner of each dwelling, commercial or institutional establishment, or other occupied structure within 500 feet of the open burning site. In the case of a lease or rental agreement, the lessee or renter shall be the person from whom permission shall be gained prior to any burning; or
- (ii) an air curtain incinerator that complies with 15A NCAC 02D .1904 is utilized at the open burning site.

Factors that the regional supervisor shall consider in deciding to grant the exception include: all the persons who need to sign the statement waiving the objection have signed it; the location of the burn; and the type, amount, and nature of the combustible substances. The regional supervisor shall not grant a waiver if a college, school, licensed day care, hospital, licensed rest home, or other similar institution is less than

- 500 feet from the proposed burn site when such institution is occupied;
  - (C) Only land-cleared plant growth is burned. Heavy oils, items containing natural or synthetic rubber, synthetic materials, or materials other than plant growth shall not be burned; however, kerosene, distillate oil, or diesel fuel may be used to start the fire;
  - (D) Initial burning begins only between the hours of 8:00 a.m. and 6:00 p.m., and no combustible material is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the following day;
  - (E) No fires are initiated or vegetation added to existing fires when the North Carolina Forest Service or other government agencies have banned burning for that area; and
  - (F) Materials are not carried off-site or transported over public roads for open burning unless the materials are carried or transported to:
    - (i) Facilities permitted in accordance with 15A NCAC 02D .1904 for the operation of an air curtain incinerator at a permanent site; or
    - (ii) A location, where the material is burned not more than four times per calendar year, which meets all of the following criteria:
      - (I) at least 500 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted;
      - (II) there are no more than two piles, each no more than 20 feet in diameter, being burned at one time; and
      - (III) the location is not a permitted solid waste management facility;
- (3) camp fires and fires used solely for outdoor cooking and other recreational purposes, ceremonial occasions, or for human warmth and comfort and that do not create a nuisance
- (4) and do not use synthetic materials, refuse, or salvageable materials for fuel;
  - (4) fires purposely set to public or private forest land for forest management practices for which burning is the accepted practice of the North Carolina Forest Service;
  - (5) fires purposely set to agricultural lands for disease and pest control and fires set for other agricultural or apicultural practices for which burning is the accepted practice of the North Carolina Department of Agriculture and Consumer Services;
  - (6) fires purposely set for wildlife management practices for which burning is the accepted practice of the Wildlife Resource Commission;
  - (7) fires for the disposal of dangerous materials when the Division has determined that it is the safest and most practical method of disposal;
  - (8) fires purposely set by manufacturers of fire-extinguishing materials or equipment, testing laboratories, or other persons, to test or develop these materials or equipment in accordance with a written protocol for the testing or development process;
  - (9) fires purposely set for the instruction and training of fire-fighting personnel at permanent fire-fighting training facilities;
  - (10) fires purposely set for the instruction and training of fire-fighting personnel when conducted under the supervision of or with the cooperation of one or more of the following agencies:
    - (A) the North Carolina Forest Service;
    - (B) the North Carolina Department of Insurance; or
    - (C) North Carolina Community Colleges;
  - (11) fires not described in Subparagraphs (9) or (10) of this Paragraph, purposely set for the instruction and training of fire-fighting personnel, provided that:
    - (A) the regional office supervisor has been notified according to the procedures and deadlines contained in the notification form and the regional office supervisor has granted permission for the burning. The information required to be submitted in the form includes:
      - (i) the address of the fire department that is requesting the training exercise;
      - (ii) the location of the training exercise;
      - (iii) a description of the type of structure or object and amount of materials to be burned at the location of the training exercise;

- (iv) the dates that the training exercise will be performed; and
- (v) an inspection from a North Carolina Asbestos Inspector that the structure being burned is free of asbestos.

The form shall be submitted 10 days prior to commencement of the burn. This form may be obtained in electronic format at <https://deq.nc.gov/about/divisions/air-quality/air-quality-enforcement/open-burning/firefighter-information> or by contacting the regional office as specified in 15A NCAC 02D .1905 and requesting it.

(B) Factors that the regional office supervisor shall consider in granting permission for the burning include:

- (i) type, amount, and nature of combustible substances. The regional office supervisor shall not grant permission for the burning of salvageable items or if the primary purpose of the fire is to dispose of synthetic materials or refuse;
- (ii) the burning of previously demolished structures. The regional office supervisor shall not consider these structures as having training value;
- (iii) the burning of motor vehicles. The regional office supervisor may allow an exercise involving the burning of motor vehicles burned over a period of time by a training unit or by several related training units if he or she determines that they have training value; and
- (iv) the distance from the location of the fire training to residential, commercial, or institutional buildings or properties.

Deviations from the dates and times of exercises, including additions, postponements, and deletions, submitted in the schedule in the approved plan shall be communicated verbally to the regional office supervisor a minimum of one hour before the burn is scheduled.

- (12) fires for the disposal of vegetative material generated as a result of a natural disaster, including tornado, hurricane, or flood, if the regional office supervisor grants permission for the burning. The person desiring to do the burning shall document and provide written notification to the regional office supervisor that there is no other practical method of disposal of the waste. Factors that the regional office supervisor shall consider in granting permission for the burning include type, amount, location of the burning, and nature of combustible substances. The regional office supervisor shall not grant permission for the burning if the primary purpose of the fire is to dispose of synthetic materials or refuse or recovery of salvageable materials. Fires authorized under this Subparagraph shall comply with the conditions of Parts (b)(2)(A) through (E) of this Rule.

(c) The authority to conduct open burning pursuant to this Section does not exempt or excuse a person from the consequences, damages, or injuries that may result from this conduct. It does not excuse or exempt a person from complying with laws, ordinances, rules or orders of other governmental entities having jurisdiction even though the open burning is conducted in compliance with this Section.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); S.L. 2011-394, s.2; Eff. July 1, 1996; Amended Eff. June 13, 2016; March 19, 2015; July 3, 2012; July 1, 2007; December 1, 2005; June 1, 2004; July 1, 1998; Readopted Eff. September 1, 2019; Amended Eff. September 1, 2023.*

**15A NCAC 02D .1904 AIR CURTAIN INCINERATORS**

(a) Applicability. This Rule applies to the following air curtain incinerators:

- (1) new and existing air curtain incinerators subject to 40 CFR 60.2245 through 60.2260 or 60.2970 through 60.2974 that combust the following materials:
  - (A) 100 percent wood waste;
  - (B) 100 percent clean lumber;
  - (C) 100 percent yard waste; or
  - (D) 100 percent mixture of only wood waste, clean lumber, and yard waste.

(2) new and existing temporary air curtain incinerators used at industrial, commercial, institutional, or municipal sites.

(b) Definitions. For the purpose of this Rule, the following definitions apply:

- (1) "Clean lumber" means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood or wood products that have been painted, pigment-

- stained, or pressure treated, or manufactured wood products that contain adhesives or resins.
- (2) "Malfunction" means an unavoidable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures caused entirely or in part by poor maintenance, careless operations, or another upset condition within the control of the emission source are not considered a malfunction.
- (3) "New air curtain incinerator" means an air curtain incinerator that began operating on the effective date of this Rule or later.
- (4) "Operator" means the person in operational control over the open burning.
- (5) "Permanent air curtain incinerator" means an air curtain incinerator whose owner or operator operates the air curtain incinerator at one facility or site during the term of the permit.
- (6) "Temporary air curtain incinerator" means an air curtain incinerator whose owner or operator moves the air curtain incinerator to another site and operates it for land clearing or right-of-way maintenance at that site on one or more occasions during the term of its permit.
- (7) "Temporary-use air curtain incinerator used in disaster recovery" means an air curtain incinerator that meets the following requirements:
- (A) combusts less than 35 tons per day of debris consisting of the materials listed in Parts (a)(1)(A) through (C) of this Rule;
  - (B) combusts debris within the boundaries of an area officially declared a disaster or emergency by federal, state, or local government; and
  - (C) combusts debris for less than 16 weeks unless the owner or operator submits a request for additional time no less than 1 week prior to the end of the 16-week period and provides the reasons that the additional time is needed. The Director shall provide written approval for the additional time if he or she finds that the additional time is warranted based on the information provided in the request.  
Examples of disasters or emergencies include tornadoes, hurricanes, floods, ice storms, high winds, or acts of bioterrorism.
- (8) "Wood waste" means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:
- (A) grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial, institutional, or industrial sources as part of maintaining yards or other private or public lands;
  - (B) construction, renovation, or demolition wastes;
  - (C) clean lumber; and
  - (D) treated wood and treated wood products, including wood products that have been painted, pigment-stained, or pressure treated, or manufactured wood products that contain adhesives or resins.
- (9) "Yard waste" means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs. Yard waste comes from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include:
- (A) construction, renovation, or demolition wastes;
  - (B) clean lumber; and
  - (C) wood waste.
- (c) Air curtain incinerators shall comply with the following conditions and requirements:
- (1) the operation of air curtain incinerators in particulate and ozone nonattainment areas shall cease in a county that the Department or the Forsyth County Office of Environmental Assistance and Protection has forecasted to be an Air Quality Action Day Code "Orange" or above during the 24-hour time period covered by that Air Quality Action Day;
  - (2) the wind direction at the time that the burning is initiated and the wind direction as forecasted by the National Weather Service during the time of the burning shall be away from areas, including public roads within 250 feet of the burning as measured from the edge of the pavement or other roadway surface, that may be affected by smoke, ash, or other air pollutants from the burning;
  - (3) no fires shall be started or material added to existing fires when the North Carolina Forest Service, Fire Marshall, or other governmental agency has banned burning for that area;
  - (4) burning shall be conducted only between the hours of 8:00 a.m. and 6:00 p.m. No combustible materials shall be added to the air curtain incinerator prior to or after this time period;
  - (5) The air curtain incinerator shall not be operated more than the maximum source operating hours-per-day and days-per-week. The maximum source operating hours-per-day and days-per-week shall be set to protect the

ambient air quality standard and prevention of significant deterioration (PSD) increment for particulate. The maximum source operating hours-per-day and days-per-week shall be determined using the modeling procedures in 15A NCAC 02D .1106(b), (c), and (f). This Subparagraph shall not apply to temporary air curtain incinerators;

- (6) air curtain incinerators shall meet manufacturer's specifications for operation and upkeep to ensure complete burning of material charged into the pit. Manufacturer's specifications shall be kept on site and be available for inspection by Division staff;
- (7) the owner or operator of an air curtain incinerator shall allow the ashes to cool and water the ash prior to its removal to prevent the ash from becoming airborne;
- (8) only distillate oil, kerosene, diesel fuel, natural gas, or liquefied petroleum gas may be used to start the fire; and
- (9) the location of the burning shall be at least 300 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted. The regional office supervisor may grant exceptions to the setback requirements if a signed, written statement waiving objections to the air curtain burning is obtained from a resident or an owner of each dwelling, commercial or institutional establishment, or other occupied structure within 300 feet of the burning site. In case of a lease or rental agreement, the lessee or renter, and the property owner shall sign the statement waiving objections to the burning. The statement shall be submitted to and approved by the regional office supervisor before initiation of the burn. Factors that the regional supervisor shall consider in deciding to grant the exception include: all the persons who need to sign the statement waiving the objection have signed it; the location of the burn; and the type, amount, and nature of the combustible substances.

(d) Exemptions. Temporary-use air curtain incinerators used in disaster recovery are excluded from the requirements of this Rule if the following conditions are met:

- (1) the air curtain incinerator meets the definition of a temporary-use air curtain incinerators used in disaster recovery as specified in Subparagraph (b)(7) of this Rule;
- (2) the air curtain incinerator meets requirements pursuant to 40 CFR 60.2969 or 60.3061 to which the air curtain incinerator is subject; and
- (3) the air curtain incinerator is operated in a manner consistent with the operations manual for the air curtain incinerator and the charge rate during operation remains less than or equal to

the lesser of 35 tons per day or the maximum charge rate specified by the manufacturer of the air curtain incinerator.

(e) Permitting. Air curtain incinerators shall be subject to 15A NCAC 02Q .0500.

- (1) The owner or operator of a new or existing permanent air curtain incinerator shall obtain a General Title V Operating Permit pursuant to 15A NCAC 02Q .0509.
- (2) The owner or operator of a new or existing temporary air curtain incinerator shall obtain a General Title V Operating Permit pursuant to 15A NCAC 02Q .0510.
- (3) The owner or operator of an existing permanent or temporary air curtain incinerator shall complete and submit a permit application within 12 months after the effective date of this Rule.
- (4) The owner or operator of a new permanent or temporary air curtain incinerator shall complete and submit a permit application 60 days prior to the date the unit commences operation.
- (5) The owner or operator of an existing permanent or temporary air curtain incinerator that is planning to close rather than obtaining a permit pursuant to 15A NCAC 02Q .0509 or 15A NCAC 02Q .0510 shall submit a closure notification to the Director within 12 months after the effective date of this Rule.

(f) Opacity limits.

- (1) The owner or operator of an existing air curtain incinerators shall meet the following opacity limits:
  - (A) Maintain opacity to less than or equal to 35 percent opacity, as determined by the average of 3 1-hour blocks consisting of 10 6-minute average opacity values, during startup of the air curtain incinerator, where startup is defined as the first 30 minutes of operation.
  - (B) Maintain opacity to less than or equal to 10 percent opacity, as determined by the average of 3 1-hour blocks consisting of 10 6-minute average opacity values, at times of operation other than during startup or during malfunctions.
- (2) The owner or operator of a new air curtain incinerator shall meet the opacity limits specified in Subparagraph (f)(1) of this Rule within 60 days after air curtain incinerator reaches the charge rate at which it will operate, but within 180 days after its initial startup.

(g) Performance tests.

- (1) Initial and annual opacity tests shall be conducted using 40 CFR 60 Appendix A-4 Test Method 9 to determine compliance with the

- opacity limitations specified in Subparagraph (f)(1) of this Rule.
- (2) The owner or operator of an existing air curtain incinerator shall conduct an initial performance test for opacity as specified in 40 CFR 60.8 within 90 days after the effective date of this rule.
  - (3) The owner or operator of a new air curtain incinerator shall conduct an initial performance test for opacity as specified in 40 CFR 60.8 within 60 days after achieving the maximum charge rate at which the affected air curtain incinerator will be operated, but not later than 180 days after initial startup of the air curtain incinerator.
  - (4) After the initial test for opacity, the owner or operator of a new or existing air curtain incinerator subject to this Rule shall conduct annual opacity tests on the air curtain incinerator no more than 12 calendar months following the date of the previous test.
  - (5) The owner or operator of an existing air curtain incinerator that has ceased operations and is restarting after more than 12 months since the previous test shall conduct an opacity test upon startup of the unit.
- (h) Recordkeeping and Reporting Requirements.
- (1) Prior to commencing construction of an air curtain incinerator, the owner or operator of a new air curtain incinerator shall submit the following information to the Director:
    - (A) a notification of intent to construct an air curtain incinerator;
    - (B) the planned initial startup date of the air curtain incinerator; and
    - (C) the materials planned to be combusted in the air curtain incinerator.
  - (2) The owner or operator of a new or existing air curtain incinerator shall do the following:
    - (A) keep records of results of initial and annual opacity tests onsite in either paper copy or electronic format for five years;
    - (B) make records available for submission to the Director or for an inspector's onsite review;
    - (C) report the results of the initial and annual opacity tests as the average of 3 1-hour blocks consisting of 10 6-minute average opacity values;
    - (D) submit initial opacity test results to the Division within 60 days following the initial test and submit annual opacity test results within 12 months following the previous report;
    - (E) submit initial and annual opacity test reports to the Division as specified in 15A NCAC 02D .0605(i); and

- (F) keep a copy of the initial and annual reports onsite for a period of five years.
- (i) In addition to complying with the requirements of this Rule, an air curtain incinerator subject to:
  - (1) 40 CFR Part 60, Subpart CCCC, shall also comply with 40 CFR 60.2245 through 60.2260; or
  - (2) 40 CFR Part 60, Subpart EEEE, shall also comply with 40 CFR 60.2970 through 60.2974.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5); 143-215.107(a)(10); 143-215.108; S.L. 2011-394, s.2; 40 CFR 60.2865; Eff. July 1, 1996; Amended Eff. July 3, 2012; July 1, 2007; December 1, 2005; August 1, 2004; Readopted Eff. September 1, 2019; Amended Eff. September 1, 2023.*

**15A NCAC 02D .1905 REGIONAL OFFICE LOCATIONS**

The Department of Environmental Quality regional offices shall handle inquiries, requests, and plans for facilities located in their respective regions. Contact information for the regional offices may be found on the Division website at <https://deq.nc.gov/about/divisions/air-quality/regional-offices>.

*History Note: Authority G.S. 143-215.3(a)(1); Eff. July 1, 1996; Amended Eff. December 1, 2005; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 5, 2016; Amended Eff. September 1, 2023; September 1, 2019.*

**15A NCAC 02D .2203 PUBLIC NOTICE**

- (a) The requirements of this Rule for public notice and public hearing shall apply to Consent Orders. The Commission may specify other conditions for Special Orders issued without consent if the conditions are needed to achieve or demonstrate compliance with a requirement under this Subchapter or 15A NCAC 02Q.
- (b) Notice of proposed Consent Order:
  - (1) The Director shall give notice pursuant to G.S. 143-215.110(a1).
  - (2) The Director shall give notice of a proposed Consent Order 30 days prior to final action regarding the Consent Order.
  - (3) The notice shall be posted on the North Carolina Division of Air Quality web site at <http://deq.nc.gov/about/divisions/air-quality/air-quality-enforcement/special-orders-by-consent> and provided to those persons specified in G.S. 143-215.110(a1)(1) for air quality special orders.
  - (4) The notice shall include the following:
    - (A) name, address, and telephone number of the Division;
    - (B) name and address of the person to whom the proposed order is directed;

- (C) a brief summary of the conditions of the proposed order, including the period of time during which action must be taken to achieve compliance and the major permit conditions or emission standards that the source will be allowed to exceed during the pendency of the order;
- (D) a brief description of the procedures to be followed by the Commission or Director in reaching a final decision on the proposed order, which shall include descriptions of the process for submitting comments and requesting a public hearing. The description shall specify that comments and requests for a public hearing are to be received by the Division within 30 days following the date of public notice; and
- (E) a description of the information available for public review, where it can be found, and procedures for obtaining copies of pertinent documents.

(c) Notice of public hearing for proposed Consent Order:

- (1) The Director shall consider requests for a public hearing, and if significant public interest for a public hearing exists, then he or she shall hold a public hearing.
- (2) The Director shall give notice of the public hearing not less than 30 days before the hearing.
- (3) The notice shall be posted on the North Carolina Division of Air Quality web site at <http://deq.nc.gov/about/divisions/air-quality/air-quality-enforcement/special-orders-by-consent> and provided to those persons specified in G.S. 143-215.110(a1)(2) for air quality special orders.
- (4) The notice shall include the information specified in Subparagraph (b)(4) of this Rule. It shall also state the time and location for the hearing and the procedures for providing comment.
- (5) The Chairman of the Commission or the Director shall appoint one or more hearing officers to preside over the public hearing and to receive written and oral comments. The hearing officer shall provide the Commission a written report of the hearing, which shall include:
  - (A) a copy of the public notice;
  - (B) a copy of the written comments and supporting documentation received;
  - (C) a summary of the oral comments received;
  - (D) recommendations of the hearing officer to the Commission; and

- (E) a proposed Consent Order for the Commission's consideration.

(d) A person may request to receive copies of notices required by this Rule, and the Director shall provide copies of notices to those who have submitted a request.

(e) A Consent Order may be modified by the Director to incorporate minor modifications, including modification of standard conditions to reflect updated versions of federal or state regulations, correction of typographical errors, or interim date extensions, without public notice provided that the modifications do not extend the final compliance date by more than four months.

*History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.3(a)(3); 143-215.3(a)(4); 143-215.110; Eff. April 1, 2004; Readopted Eff. February 1, 2018; Amended Eff. September 1, 2023.*

**15A NCAC 02Q .0104 WHERE TO OBTAIN AND FILE PERMIT APPLICATIONS**

(a) A person may obtain application forms for a permit or permit modification from the Division of Air Quality website at <https://deq.nc.gov/about/divisions/air-quality/air-quality-permitting>. A person may request to receive copies of application forms available on the Division of Air Quality website, and the Director shall provide the requested copies.

(b) An applicant for a permit or permit modification shall submit the application for permit or permit modification as follows:

- (1) Provide a hard copy of submittals pursuant to 15A NCAC 02Q .0500 with original signature of the responsible official, as defined in 15A NCAC 02Q .0503, to the Director, Division of Air Quality, 1641 Mail Service Center, Raleigh, North Carolina 27699-1641.
- (2) Provide a hard copy of submittals pursuant to 15A NCAC 02Q .0300 with original signature of the responsible official, as defined in 15A NCAC 02Q .0303, to the regional office address for the region in which the facility is located in accordance with 15A NCAC 02Q .0105.
- (3) After the Division makes available a system for receiving electronic submittals, as identified in Paragraph (c) of this Rule, applicants may submit permit applications in electronic format following the procedures in Paragraph (c) of this Rule in lieu of the procedures in Subparagraphs (1) and (2) of this Paragraph.

(c) Electronic submittals shall meet the following requirements:

- (1) The applicant shall provide electronic submittals pursuant to 15A NCAC 02Q .0500 to the Division through a system that has been approved by EPA as compliant with the Cross Media Electronic Reporting Rule (CROMERR) pursuant to 40 CFR Part 3. When the approved electronic reporting system is approved by EPA and available, a link shall be available on the Division of Air Quality permitting website at

<https://deq.nc.gov/about/divisions/air-quality/air-quality-permitting>.

- (2) The applicant shall provide electronic submittals pursuant to 15A NCAC 02Q .0300 to the Division through the system identified in Subparagraph (1) of this Paragraph, or as otherwise specified by the Division on its permitting website at <https://deq.nc.gov/about/divisions/air-quality/air-quality-permitting>.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109;

*Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*

*Eff. July 1, 1994;*

*Amended Eff. January 1, 2015; August 1, 2002; July 1, 1997;*

*Readopted Eff. April 1, 2018;*

*Amended Eff. September 1, 2023.*

**15A NCAC 02Q .0105 COPIES OF REFERENCED DOCUMENTS**

(a) Copies of the Code of Federal Regulations (CFR) sections referred to in this Subchapter may be obtained free of charge online at <https://www.govinfo.gov/app/collection/cfr/>. Copies of the rules are also available for public inspection at Department of Environmental Quality regional offices upon request. The contact information for the regional offices is provided on the Division of Air Quality website at <https://deq.nc.gov/about/divisions/air-quality/regional-offices>.

(b) Excluding information entitled to confidential treatment pursuant to 15A NCAC 02Q .0107, permit applications and permits may be reviewed electronically through the public access portal on the Division of Air Quality website or at a Department of Environmental Quality regional office, which may be contacted as specified in Paragraph (a) of this Rule.

(c) Paper copies of permit applications and permits may be requested for pickup at a Department of Environmental Quality regional office for ten cents (\$0.10) per page.

*History Note:* Authority G.S. 143-215.3(a)(1); 150B-19(5); *Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*

*Eff. July 1, 1994;*

*Amended Eff. December 1, 2005;*

*Readopted Eff. April 1, 2018;*

*Amended Eff. September 1, 2023.*

**15A NCAC 02Q .0206 PAYMENT OF FEES**

(a) Payment of fees required pursuant to 15A NCAC 02Q .0200 may be by check or money order made payable to the N.C. Department of Environmental Quality. Annual permit fee payments shall refer to the permit number.

(b) If, within 30 days after being billed, the permit holder fails to pay an annual fee required pursuant to 15A NCAC 02Q .0200, the Director may initiate action to terminate the permit pursuant to 15A NCAC 02Q .0309 or .0519.

(c) A holder of multiple permits may arrange to consolidate the payment of annual fees into one annual payment.

(d) The payment of the permit application fee required by 15A NCAC 02Q .0200 shall accompany the application and is non-refundable.

(e) The Division shall annually prepare and make publicly available an accounting showing aggregate fee payments collected pursuant to 15A NCAC 02Q .0200 from facilities that have obtained or will obtain permits pursuant to 15A NCAC 02Q .0500 except synthetic minor facilities, as defined in 15A NCAC 02Q .0503, and showing a summary of reasonable direct and indirect expenditures required to develop and administer the Title V permit program.

(f) In lieu of the procedures in Paragraph (a) of this Rule, fees required pursuant to 15A NCAC 02Q .0200 may be paid electronically if an electronic payment option is available for the fee, as provided on the Division of Air Quality Permitting website at <https://deq.nc.gov/about/divisions/air-quality/air-quality-permitting>.

*History Note:* Authority G.S. 143-215.3(a)(1),(1a),(1b),(1d); *Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*

*Eff. July 1, 1994;*

*Amended Eff. September 1, 2015;*

*Readopted Eff. April 1, 2018;*

*Amended Eff. September 1, 2023.*

**15A NCAC 02Q .0304 APPLICATIONS**

(a) Obtaining and filing application. Permit, permit modification, or permit renewal applications may be obtained and shall be filed according to 15A NCAC 02Q .0104.

(b) Information to accompany application. Along with filing a complete application form, the applicant shall also file the following:

- (1) for a new facility or an expansion of existing facility, a zoning consistency determination according to G.S. 143-215.108(f) that:
  - (A) bears the date of receipt entered by the clerk of the local government; or
  - (B) consists of a letter from the local government indicating that zoning or subdivision ordinances are met by the facility;
- (2) for a new facility or an expansion of existing facility in an area without zoning, an affidavit and proof of publication of a legal notice as required pursuant to 15A NCAC 02Q .0113;
- (3) for permit renewal, an emissions inventory that contains the information specified pursuant to 15A NCAC 02D .0202 using emission inventory forms or electronic data systems provided by the Division; and
- (4) documentation showing the applicant complies with Parts (A) or (B) of this Subparagraph if this information is necessary to evaluate the source, its air pollution abatement equipment, or the facility;

- (A) the applicant is financially qualified to carry out the permitted activities; or
- (B) the applicant has substantially complied with the air quality and emissions standards applicable to any activity in which the applicant has previously been engaged, and has been in substantial compliance with federal and State environmental laws and rules.

(c) When to file application. For sources subject to the requirements of 15A NCAC 02D .0530 or .0531, applicants shall file air permit applications no less than 180 days before the projected construction date. For other sources, applicants shall file air permit applications no less than 90 days before the projected date of construction of a new source or modification of an existing source.

(d) Permit renewal, name, or ownership changes with no modifications. If no modification has been made to the originally permitted source, application for permit change may be made by application to the Director as specified in 15A NCAC 02Q .0104. The permit renewal, name, or ownership change application shall state that there have been no changes in the permitted facility since the permit was last issued.

To make a name or ownership change, the applicant shall send the Director the content specified in 15A NCAC 02Q .0305(3) or (4) signed by the responsible official as defined in 15A NCAC 02Q .0303.

(e) Applications for date and reporting changes. Application for changes in construction or test dates or reporting procedures may be made by letter to the Director as specified in 15A NCAC 02Q .0104. To make changes in construction or test dates or reporting procedures, the applicant shall send the Director the letter specified in 15A NCAC 02Q .0305(5) signed by the responsible official as defined in 15A NCAC 02Q .0303.

(f) When to file applications for permit renewal. Applicants shall file applications for renewals as specified in 15A NCAC 02Q .0104 no less than 90 days before expiration of the permit. If a hard copy of the application is mailed to the Director, the application shall be postmarked no later than 90 days before expiration of the permit.

(g) Name or ownership change. The permittee shall file requests for permit name or ownership changes when the permittee is aware of the name or ownership change.

(h) Requesting additional information. Whenever the information provided on the permit application forms does not adequately describe the source or its air cleaning device, the Director may request that the applicant provide other information to evaluate the source or its air cleaning device. Before acting on a permit application, the Director may request information from an applicant and conduct an inquiry or investigation to determine compliance with standards.

(i) Application fee. With the exceptions specified in 15A NCAC 02Q .0203(i), a non-refundable permit application processing fee shall accompany the application. The permit application processing fees are listed in 15A NCAC 02Q .0200. A permit application shall be incomplete until the permit application processing fee is received.

(j) Correcting submittals of incorrect information. An applicant shall have a continuing obligation to submit relevant facts pertaining to his or her permit application and to correct incorrect information in his or her permit application.

(k) Retaining copy of permit application package. The applicant shall retain during the permit term one complete copy of the application package and the information submitted in support of the application package.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is sooner; Eff. July 1, 1994; Amended Eff. September 1, 2015; January 1, 2009; December 1, 2005; July 1, 1999; Readopted Eff. April 1, 2018; Amended Eff. September 1, 2023.*

**15A NCAC 02Q .0305 APPLICATION SUBMITTAL CONTENT**

If an applicant does not submit the following information with the application package, the application package shall be considered incomplete for processing:

- (1) for new facilities and modified facilities:
  - (a) an application fee required pursuant to 15A NCAC 02Q .0200;
  - (b) a zoning consistency determination required pursuant to 15A NCAC 02Q .0304(b)(1);
  - (c) the documentation required pursuant to 15A NCAC 02Q .0304(b)(2) if required;
  - (d) a financial qualification or substantial compliance statement pursuant to 15A NCAC 02Q .0507(d)(3), if required; and
  - (e) applications required pursuant to 15A NCAC 02Q .0304(a) and signed by the responsible official;
- (2) for renewals: the application required pursuant to 15A NCAC 02Q .0304(a) and (d), signed by the responsible official, and an emissions inventory that contains the information specified pursuant to 15A NCAC 02D .0202, Registration of Air Pollution Sources;
- (3) for a name change: a letter signed by the responsible official indicating the current facility name, the date on which the name change will occur, and the new facility name;
- (4) for an ownership change: an application fee required pursuant to 15A NCAC 02Q .0200 and:
  - (a) a letter signed by the seller and the buyer, indicating the change;
  - (b) a letter bearing the signature of both the seller and buyer, containing a written agreement with a specific date for the transfer of permit responsibility, coverage, and liability

- between the current and new permittee; or
- (c) submit the form provided by the Division pursuant to 15A NCAC 02Q .0104; and
- (5) for corrections of typographical errors; changes in name, address, or telephone number of the individual identified in the permit; changes in test dates or construction dates; or similar minor changes: a letter signed by the responsible official describing the proposed change and explaining the need for the proposed change.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. July 1, 1994; Amended Eff. December 1, 2005; April 1, 2004; Readopted Eff. April 1, 2018; Amended Eff. September 1, 2023.*

**15A NCAC 02Q .0307 PUBLIC PARTICIPATION PROCEDURES**

- (a) This Rule shall not apply to sources subject to the requirements of 15A NCAC 02D .0530 or .0531 or Appendix S of 40 CFR Part 51. For sources subject to the requirements of 15A NCAC 02D .0530 or .0531 or Appendix S of 40 CFR Part 51, the procedures in 15A NCAC 02D .0530 or .0531 or Appendix S of 40 CFR Part 51 shall be followed, respectively.
- (b) Public notice shall be given by publication in a newspaper of general circulation in the area where the facility is located and shall be provided to persons who are on the Division's notification list for air quality permit notices and to the EPA.
- (c) The public notice shall identify:
  - (1) the affected facility;
  - (2) the name and address of the permittee;
  - (3) the name and address of the person to whom to send comments and requests for public hearing;
  - (4) the name, address, and telephone number of a Divisional staff person from whom interested persons may obtain additional information, including copies of the draft permit, the application, compliance plan, monitoring and compliance reports, other relevant supporting materials, and other materials available to the Division that are relevant to the permit decision;
  - (5) the activity or activities involved in the permit action;
  - (6) the emissions change involved in a permit modification;
  - (7) a brief description of the public comment procedures;
  - (8) the procedures to follow to request a public hearing unless a public hearing has already been scheduled; and
  - (9) the time and place of the hearing that has already been scheduled.

- (d) The notice shall allow not less than 30 days for public and EPA comments.
- (e) If the Director determines that significant public interest exists or that the public interest will be served, the Director shall require a public hearing to be held on a draft permit. Notice of a public hearing shall be given not less than 30 days before the public hearing.
- (f) The Director shall make available for public inspection in the region affected the information submitted by the permit applicant and the Division's analysis of that application.
- (g) The Director shall send EPA a copy of the draft permit subject to public and EPA comment when sending EPA the notice of request for public comment for that permit and shall send EPA a copy of the permit when it is issued.
- (h) Confidential material shall be handled in accordance with 15A NCAC 02Q .0107.

*History Note: Authority G.S. 143-215.3(a)(1),(3); 143-215.4(b); 143-215.108; Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. July 1, 1994; Amended Eff. July 1, 1998; Readopted Eff. April 1, 2018; Amended Eff. September 1, 2023.*

**15A NCAC 02Q .0505 APPLICATION SUBMITTAL CONTENT**

- If an applicant does not submit the following information with its application package, the application package shall be returned:
- (1) for new facilities and modified facilities:
    - (a) an application fee as required pursuant to 15A NCAC 02Q .0200;
    - (b) a consistency determination as required pursuant to 15A NCAC 02Q .0507(d)(1);
    - (c) the documentation required pursuant to 15A NCAC 02Q .0507(d)(2);
    - (d) a financial qualification or substantial compliance statement pursuant to 15A NCAC 02Q .0507(d)(3) if required; and
    - (e) applications as required pursuant to 15A NCAC 02Q .0507(a), signed as required by 15A NCAC 02Q .0520;
  - (2) for renewals: applications as required pursuant to 15A NCAC 02Q .0507(a), signed as required by 15A NCAC 02Q .0520;
  - (3) for a name change: a letter signed by a responsible official in accordance with 15A NCAC 02Q .0520 indicating the current facility name, the date on which the name change will occur, and the new facility name;
  - (4) for an ownership change: an application fee as required pursuant to 15A NCAC 02Q .0200; and a letter bearing the signature of both the seller and buyer and containing a written agreement with a specific date for the transfer

- (5) of permit responsibility, coverage, and liability between the current and new permittee; and for corrections of typographical errors; changes of the name, address, or telephone number of an individual identified in the permit; changes in test dates or construction dates; or similar minor changes: a letter signed by a responsible official in accordance with 15A NCAC 02Q .0520 describing the proposed change and explaining the need for the proposed change.

*History Note: Authority G.S. 143-215.3(a)(1),(1a); 143-215.107(a)(10); 143-215.108; Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. July 1, 1994; Amended Eff. April 1, 2004; Readopted Eff. April 1, 2018; Amended Eff. September 1, 2023; September 1, 2022.*

**15A NCAC 02Q .0507 APPLICATION**

(a) Except for:

- (1) minor permit modifications covered pursuant to 15A NCAC 02Q .0515;
- (2) significant modifications covered pursuant to 15A NCAC 02Q .0516(c); or
- (3) renewals submitted pursuant to 15A NCAC 02Q .0513;

the owner or operator of a new or existing source shall have 12 months after the facility or source becomes subject to the Title V operating permit program pursuant to 15A NCAC 02Q .0500 to file a complete application for a permit or permit revision. However, the owner or operator of a source shall not begin construction or operation of a source until he or she has obtained a construction and operation permit pursuant to 15A NCAC 02Q .0501(b) or (c) and 15A NCAC 02Q .0504.

(b) An application shall include the information described in 40 CFR 70.3(d) and 70.5(c), including a list of insignificant activities because of size or production rate but not including insignificant activities because of category. An application shall be certified by a responsible official for truth, accuracy, and completeness. In an application submitted pursuant to this Rule, the applicant may attach copies of applications submitted pursuant to 15A NCAC 02Q .0400 or 15A NCAC 02D .0530 or .0531 if the information in those applications contains information required in this Section and is current, accurate, and complete.

(c) Application for a permit, permit revision, or permit renewal shall be made in accordance with 15A NCAC 02Q .0104 on forms of the Division and shall include plans and specifications with complete data and information as required by this Rule. If the information provided on these forms does not describe the source or its air pollution abatement equipment to the extent necessary to evaluate the application, the Director shall request that the applicant provide other information necessary to evaluate the source and its air pollution abatement equipment.

(d) Along with filing a complete application, the applicant shall also file the following:

- (1) for a new facility or an expansion of existing facility, a consistency determination in accordance with G.S. 143-215.108(f) that:
  - (A) bears the date of receipt entered by the clerk of the local government; or
  - (B) consists of a letter from the local government indicating that zoning or subdivision ordinances are met by the facility;
- (2) for a new facility or an expansion of an existing facility in an area without zoning, an affidavit and proof of publication of a legal notice as required pursuant to 15A NCAC 02Q .0113; and
- (3) if required by the Director, information showing that:
  - (A) the applicant is financially qualified to carry out the permitted activities; or
  - (B) the applicant has substantially complied with the air quality and emissions standards applicable to any activity in which the applicant has previously been engaged and has been in substantial compliance with federal and State environmental laws and rules.

(e) An applicant who fails to submit relevant facts or submits incorrect information in a permit application shall, upon becoming aware of the failure or incorrect submittal, submit supplementary facts or corrected information to resolve the deficiency. In addition, an applicant shall provide additional information to address requirements to which the source becomes subject after the date the applicant filed a complete application but prior to release of a draft permit.

(f) The submittal of a complete permit application shall not affect the requirement that a facility have a permit pursuant to 15A NCAC 02D .0530, .0531, or .0532 or pursuant to 15A NCAC 02Q .0400.

(g) The Director shall give priority to permit applications containing early reduction demonstrations pursuant to Section 112(i)(5) of the federal Clean Air Act. The Director shall take final action on these permit applications after receipt of the complete permit application.

(h) Except as specified in 15A NCAC 02Q .0203(i), a non-refundable permit application processing fee, defined in 15A NCAC 02Q .0200, shall accompany the application. The permit application shall be deemed incomplete until the permit application processing fee is received.

(i) The applicant shall retain during the permit term one complete copy of the application package and the information submitted in support of the application package.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108; Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. July 1, 1994; Amended Eff. July 1, 1997; July 1, 1996; February 1, 1995;*

*Temporary Amendment Eff. December 1, 1999;  
Amended Eff. September 1, 2015; April 1, 2004; July 1, 2000;  
Readopted Eff. April 1, 2018;  
Amended Eff. September 1, 2023; September 1, 2022.*

**15A NCAC 02Q .0508 PERMIT CONTENT**

(a) A permit shall specify and reference the origin and authority for each term or condition and shall identify differences compared to the applicable requirement on which the term or condition is based.

(b) A permit shall specify emission limitations and standards, including operational requirements and limitations, that assure compliance with all applicable requirements at the time of permit issuance.

(c) Where an applicable requirement of the federal Clean Air Act is more stringent than an applicable requirement of rules promulgated pursuant to Title IV, both provisions shall be placed in a permit. A permit shall state that both provisions are enforceable by EPA.

(d) A permit for sources using an alternative emission limit established in 15A NCAC 02D .0501(d) or 15A NCAC 02D .0952 shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(e) The expiration date of a permit shall be for a fixed term of five years for sources covered by Title IV and for a term of no more than five years from the date of issuance for all other sources including solid waste incineration units combusting municipal waste subject to standards in Section 129(e) of the federal Clean Air Act.

(f) A permit shall contain monitoring and related recordkeeping and reporting requirements as specified in 40 CFR 70.6(a)(3) and 70.6(c)(1), including conditions requiring:

- (1) the permittee to submit reports of required monitoring no less frequent than every six months. The permittee shall submit reports:
  - (A) on forms obtained from the Division as specified in 15A NCAC 02Q .0104;
  - (B) in a manner as specified by a permit condition; or
  - (C) on other forms that contain the information required by this Subchapter or as specified by a permit condition;
- (2) the permittee to report:
  - (A) malfunctions, emergencies, and other upset conditions as prescribed in 15A NCAC 02D .0524, .0535, .1110, or .1111; and
  - (B) deviations quarterly from permit requirements not covered by 15A NCAC 02D .0524, .0535, .1110, or .1111. The permittee shall include the probable cause of the deviations and any corrective actions or preventive measures taken; and
- (3) the responsible official to certify all deviations from permit requirements.

(g) At the request of a permittee, the Director may allow records to be maintained in electronic form in lieu of maintaining paper records. The Director shall make this decision based on whether the electronic records contain the same information as the paper records and the availability of the electronic records for inspection to demonstrate compliance.

(h) A permit for facilities covered by 15A NCAC 02D .2100, Risk Management Program, shall contain:

- (1) a statement listing 15A NCAC 02D .2100 as an applicable requirement; and
- (2) conditions that require the owner or operator of the facility to submit:
  - (A) a compliance schedule for meeting the requirements of 15A NCAC 02D .2100 by the dates provided in 15A NCAC 02D .2101(a); or
  - (B) as part of the compliance certification required by Paragraph (n) of this Rule, a certification statement that the source is in compliance with the requirements of 15A NCAC 02D .2100, including the registration and submission of the risk management plan.

The content of the risk management plan need not be incorporated as a permit term or condition.

(i) A permit shall:

- (1) contain a condition prohibiting emissions exceeding any allowances that a facility lawfully holds pursuant to Title IV but shall not limit the number of allowances held by a permittee. A permittee shall not use allowances as a defense to noncompliance with any other applicable requirement;
- (2) contain a severability clause so that various permit requirements shall continue to be valid in the event of a challenge to any other portion of the permit;
- (3) state that noncompliance with a condition of the permit constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application;
- (4) state that the permittee may not use as a defense in an enforcement action that it would have been necessary to halt or reduce the permitted activity to maintain compliance with the conditions of the permit;
- (5) state that the Director may reopen, modify, revoke and reissue, or terminate the permit for reasons specified in 15A NCAC 02Q .0517 or .0519;
- (6) state that the filing of a request by the permittee for a permit revision, revocation and reissuance, termination, notification of planned changes, or anticipated noncompliance does not stay any permit condition;

- (7) specify the conditions in which the permit may be reopened before the expiration of the permit;
  - (8) state that the permit does not convey any property rights of any sort, or any exclusive privileges;
  - (9) state that the permittee shall furnish to the Division, in a timely manner:
    - (A) any information that the Director may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit, and
    - (B) copies of records required to be kept by the permit when copies are requested by the Director.

The permit shall also state that for information claimed to be confidential, the permittee may furnish the confidential records directly to EPA along with a claim of confidentiality;
  - (10) contain a provision to ensure that the permittee pays fees required by 15A NCAC 02Q .0200;
  - (11) contain a condition that authorizes the permittee to make CAA 502(b)(10) changes pursuant to 15A NCAC 02Q .0523(a), off-permit changes, or emission trades in accordance with 15A NCAC 02Q .0523;
  - (12) include the applicable requirements for the sources covered by the permit;
  - (13) include fugitive emissions in the same manner as stack emissions;
  - (14) contain a condition requiring annual reporting of actual emissions as required by 15A NCAC 02Q .0207;
  - (15) include sources, including insignificant activities; and
  - (16) contain other provisions the Director considers appropriate.
- (j) A permit shall state the terms and conditions for reasonably anticipated operating scenarios identified by the applicant in the application. These terms and conditions shall:
- (1) require the permittee, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the operating scenario in which it is operating;
  - (2) extend the permit shield described in 15A NCAC 02Q .0512 to all terms and conditions in each reasonably anticipated operating scenario; and
  - (3) ensure that each operating scenario meets all applicable requirements of Subchapter 02D of this Chapter and of this Section.
- (k) A permit shall identify which terms and conditions are enforceable by the Division only.
- (l) A permit shall state that the permittee shall allow personnel of the Division to:
- (1) enter the permittee's premises where the permitted facility is located or emissions-related activity is conducted, or where records are kept by the conditions of the permit;
  - (2) have access to and copy any records that are required to be kept by the conditions of the permit;
  - (3) inspect sources, equipment, including monitoring and air pollution control equipment, practices, or operations regulated or required by the permit; and
  - (4) sample or monitor substances or parameters, to assure compliance with the permit or applicable requirements.
- (m) When a compliance schedule is required by 40 CFR 70.5(c)(8) or by a rule contained in Subchapter 02D of this Chapter, the permit shall contain the compliance schedule and shall state that the permittee shall submit semiannually, or more frequently if specified in the applicable requirement, a progress report. The progress report shall contain:
- (1) dates for achieving the activities, milestones, or compliance required in the compliance schedule and dates when these activities, milestones, or compliance were achieved; and
  - (2) an explanation of why any dates in the compliance schedule were not or may not be met and any preventive or corrective measures adopted.
- (n) The permit shall contain requirements for compliance certification with the terms and conditions in the permit that are enforceable by EPA pursuant to Title V of the federal Clean Air Act, including emissions limitations, standards, and work practices. The permit shall specify:
- (1) the frequency, annually or more frequently as specified in the applicable requirements, of submissions of compliance certifications;
  - (2) a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;
  - (3) a requirement that the compliance certification include:
    - (A) the identification of each term or condition of the permit that is the basis of the certification;
    - (B) the status of compliance with the terms and conditions of the permit for the period covered by the certification, based on the methods or means designated in 40 CFR 70.6(c)(5)(iii)(B). The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance was required and in which an excursion or exceedance as defined in 40 CFR 64 occurred;
    - (C) whether compliance was continuous or intermittent;

- (D) the identification of the methods or other means used by the owner and operator for determining the compliance status with each term and condition during the certification period; these methods shall include the methods and means required in 40 CFR Part 70.6(a)(3). The owner or operator also shall identify any other material information that shall be included in the certification to comply with Section 113(c)(2) of the federal Clean Air Act, which prohibits knowingly making a false certification or omitting material information; and
- (E) other facts as the Director may require to determine the compliance status of the source; and
- (4) that all compliance certifications be submitted to EPA as well as to the Division.

- (6) emissions change involved in the proposed permit modification;
- (7) a brief description of the public comment procedures;
- (8) the procedures to follow to request a public hearing unless a public hearing has already been scheduled; and
- (9) the time and place of a hearing that has already been scheduled.

- (d) The notice shall allow not less than 30 days for public comments.
- (e) If the Director determines that significant public interest exists or that the public interest will be served, the Director shall require a public hearing to be held on a draft permit. Notice of a public hearing shall be given not less than 30 days before the public hearing.
- (f) The Director shall make available for public inspection in the region affected the information submitted by the permit applicant and the Division's analysis of that application.
- (g) A person requesting paper copies of material identified in Subparagraph (c)(4) of this Rule shall pay ten cents (\$0.10) per page copied. Confidential material shall be handled in accordance with 15A NCAC 02Q .0107.

*History Note: Authority G.S. 143-215.3(a)(1),(2); 143-215.65; 143-215.66; 143-215.107(a)(10); 143-215.108; Temporary Rule Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is sooner; Eff. July 1, 1994; Amended Eff. July 1, 1996; Temporary Amendment Eff. December 1, 1999; Amended Eff. August 1, 2008; June 1, 2008; January 1, 2007; December 1, 2005; April 1, 2001; July 1, 2000; Readopted Eff. April 1, 2018; Amended Eff. September 1, 2023; September 1, 2022.*

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282; S.L. 1989, c. 168, s. 45; Rule originally codified as part of 15A NCAC 2H .0610; Eff. July 1, 1998; Readopted Eff. July 1, 2018; Amended Eff. September 1, 2023.*

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**15A NCAC 02Q .0710 PUBLIC NOTICE AND OPPORTUNITY FOR PUBLIC HEARING**

- (a) If the owner or operator of a facility chooses to make a demonstration pursuant to 15A NCAC 02Q .0709(a)(2) or (b), the Commission or its delegate shall approve or disapprove the permit after a public notice with an opportunity for a public hearing.
- (b) The public notice shall be given by publication in a newspaper of general circulation in the area where the facility is located and shall be provided to persons who are on the Division's notification list for air quality permit notices.
- (c) The public notice shall identify:
  - (1) the affected facility;
  - (2) the name and address of the permittee;
  - (3) the name and address of the person to whom to send comments and requests for public hearing;
  - (4) the name, address, and telephone number of a Divisional staff person from whom interested persons may obtain additional information, including copies of the draft permit, the application, compliance plan, pollution prevention plan, monitoring and compliance reports, and other materials available to the Division that are relevant to the permit decision;
  - (5) the activity or activities involved in the permit action;

**15A NCAC 07K .0207 STRUCTURAL ACCESSWAYS OVER FRONTAL DUNES EXEMPTED**

- (a) The North Carolina Coastal Resources Commission exempts from the CAMA permit requirement all structural pedestrian accessways, including beach matting to provide public or private access over primary and frontal dunes when such accessways can be shown to meet the following criteria:
  - (1) The accessway shall not exceed six feet in width and shall be for private residential or for public access to an ocean beach. This exemption does not apply to accessways for commercial use or for motor-powered vehicular use.
  - (2) The accessway shall be constructed so as to make no alterations to the frontal dunes that are not necessary to construct the accessway. This means that the accessway shall be constructed over the frontal dune without any alteration of the dunes. In no case shall the dune be altered so as to diminish its capacity as a protective barrier against flooding by reducing the volume of the dune. Driving of pilings into the dune or a local, State, or federal government's use of beach matting for public access that is installed at grade and involves no excavation or fill shall

not be considered alteration of a frontal dune for the purposes of this Rule.

- (3) The accessway shall conform with any applicable local or State building code standards.
- (4) Structural accessways may be constructed no more than six feet seaward of the waterward toe of the frontal or primary dune, provided they do not interfere with public trust rights and emergency access along the beach. Structural accessways are not restricted by the requirement to be landward of the First Line of Stable and Natural Vegetation as described in 15A NCAC 07H .0309(a).
- (5) Damaged, non-functioning, or portions of accessways that become non-compliant with Subparagraph (4) of this Paragraph shall be removed by the property owner.

(b) Before beginning any work under this exemption, the permit applicant shall notify the CAMA local permit officer or Division of Coastal Management representative of the proposed activity to allow on-site review of the proposed to ensure the accessway meets the exemption criteria. Notification can be by telephone, in person, or in writing and must include:

- (1) name, address, and telephone number of landowner and location of work including county and nearest community; and
- (2) the dimensions of the proposed structural accessway.

*History Note: Authority G.S. 113A-103(5)c; Eff. November 1, 1984; Amended Eff. December 1, 1991; May 1, 1990; Readopted Eff. August 1, 2021; Amended Eff. September 1, 2023; December 1, 2021.*

**15A NCAC 07M .0602 DEFINITIONS**

*History Note: Authority G.S. 113A-102; 113A-107; 113A-108; 113A-118; 113A-120(a)(8); 113A-124(c)(5); Eff. July 1, 1983; Repealed Eff. September 1, 2023.*

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**15A NCAC 10B .0113 BIG GAME HARVEST REPORTING**

(a) Definitions. The following definitions shall apply in this Rule:

- (1) "Authorization number" means the number or code issued by the Commission after big game harvest registration is completed, which shall serve as proof of registration and allow continued possession of the carcass.
- (2) "Big Game" means bear, wild turkey, and white-tailed deer, as defined in G.S. 113-129.
- (3) "Big Game Harvest Report Card" means the non-transferrable physical or electronic reporting card issued to an individual by the

Commission as part of his or her big game license, where the hunter validates his or her big game harvest and records the authorization number.

- (4) "DMAP" means Deer Management Assistance Program as defined in G.S. 113-291.2(e).
- (5) "Field Dress" means the bleeding or removal of the digestive, respiratory, and circulatory organs.
- (6) "Validate" or "validation" means electronically recording a harvest on the mobile app, cutting or punching-out the day and month of the harvest on the Big Game Harvest Report Card or Bonus Antlerless Deer Harvest Report Card, or affixing a Commission-issued DMAP tag to a harvested animal.
- (7) "Register" or "Registration" means the process by which the big game harvest is reported to the Commission and an authorization number is issued by the Commission.
- (8) "Remote Area" means an area where cellular phone signal, internet access, and the mobile app are unavailable.
- (9) "Site of kill" or "site of harvest" means the location that a person takes possession of harvested big game.
- (10) "Successful hunter" means a person that has lawfully taken and reduced to possession a big game animal.
- (11) "Mobile app" means a unique Commission application that may be downloaded to a mobile device allowing successful hunters to validate and register a big game harvest.

(b) An individual hunting big game animals, including license exempt individuals, shall have an electronic or paper version of the Big Game Harvest Report Card, Bonus Antlerless Deer Harvest Report Card, or DMAP tag pursuant to G.S. 113-291.2 on his or her person while hunting.

(c) Validation. A successful hunter shall validate his or her Big Game Harvest Report Card or the Bonus Antlerless Deer Harvest Report Card or affix a Commission-issued DMAP tag before moving a big game animal from the site of kill.

(d) Field Dressing. Harvested big game may be field dressed at the site of kill or before registration. Further processing that obscures the identification of the harvested animal's species, age, or sex shall be prohibited without a valid authorization number.

(e) Registration. Harvested big game shall be registered via the Commission's mobile app, online at [www.ncwildlife.org](http://www.ncwildlife.org), by calling 1-800-446-8663, or as described in the DMAP license. Harvested big game shall be registered before the animal is:

- (1) skinned;
- (2) dismembered;
- (3) left unattended by the successful hunter; or
- (4) placed in the possession of another person.

Harvested big game animals that are not skinned, dismembered, left unattended by the successful hunter, or placed in the possession of another person shall be registered by 12:00 p.m. the day following the harvest.

(f) Registration in Remote Areas. Big game harvested in remote areas shall be registered by 12:00 p.m. the day after leaving the remote area. Big game harvested in remote areas may:

- (1) be placed in the possession of another, if the person in possession of the big game has the successful hunter's name and date of kill on his or her person; and
- (2) be skinned and dismembered before registration, if the carcass cannot be transported intact.

(g) Authorization number. Successful hunters using the paper Big Game Harvest Report Card or Bonus Antlerless Deer Harvest Report shall record the authorization number in the space provided for the harvested big game animal. Successful hunters using a Commission-issued DMAP tag shall record and maintain the authorization number as described in the DMAP license.

(h) Unattended Harvests. Successful hunters that leave a harvested big game animal unattended or in the possession of another person shall identify the carcass by attaching the authorization number issued at the time of registration. Except as provided in Paragraph (f) of this Rule, a person that takes possession of a big game animal from a successful hunter shall retain the authorization number of that animal.

*History Note: Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291;*  
*Eff. February 1, 1976;*  
*Amended Eff. July 1, 1998; July 1, 1997; July 1, 1995; July 1, 1994; July 1, 1993; July 1, 1989;*  
*Temporary Amendment Eff. July 1, 1999;*  
*Amended Eff. August 1, 2017; August 1, 2012; August 1, 2010;*  
*June 1, 2009; May 1, 2007; May 1, 2004; July 1, 2000;*  
*Readopted Eff. August 1, 2020;*  
*Amended Eff. September 1, 2023.*

**15A NCAC 10F .0102 APPLICATION FOR CERTIFICATE OF VESSEL NUMBER**

(a) Definitions. The definitions in G.S. 75A-2 shall apply throughout this Subchapter and to the forms prescribed pursuant to this Subchapter. As used in this Subchapter, the following definitions shall also apply:

- (1) "Boating Accident" means a collision, accident, casualty, or occurrence involving a vessel or its equipment and resulting in:
  - (A) damage by or to the vessel, its equipment, or other property;
  - (B) injury or loss of life to a person; or
  - (C) the disappearance of a person from a vessel under circumstances that indicate the possibility of death or injury.

A "boating accident" includes capsizing, collision, foundering, flooding, fire, explosion, and the disappearance of a vessel other than by theft.
- (2) "Certificate of Title" means a document that serves as evidence of ownership of a vessel.

- (3) "Charter Fishing Vessel" means a vessel carrying passengers for hire who are engaged in recreational fishing.
- (4) "Dealer" means a person, firm, or corporation engaged in the business of offering vessels for sale at retail or wholesale from an established location.
- (5) "Government Agency Vessel" means a vessel owned and operated by the United States or a federal agency, a state, or a subdivision of a state.
- (6) "Rent or Lease Vessel" means a vessel that is rented or leased by the owners to an individual for a defined period of time.
- (7) "Manufacturer" means a person, firm, or corporation engaged in the business of manufacturing vessels either upon commission or for sale after manufacture.
- (8) "Nonprofit Rescue Squad Vessel" means a vessel owned and operated by a nonprofit rescue squad exclusively for rescue purposes, including rescue training.
- (9) "Proof of Ownership Document" means a document that provides evidence of ownership, including a Certificate of Number or a Certificate of Title issued by the Commission or a similar document issued by another state or country, an affidavit, a bill of sale, a manufacturer's statement of origin, or another document that establishes ownership.
- (10) "Vessel Agent" means an individual or business authorized by the Commission to conduct vessel transactions for certificate of number and certificate of titling requirements in G.S. 75A.

(b) General. The certificate of numbering and certificate of titling requirements of G.S. 75A-4, 75A-7, 75A-34, and 75A-35 shall apply to vessels operated on the public waters of North Carolina, including rented and leased vessels, commercial fishing vessels, and commercial passenger vessels. Vessels operated pursuant to a dealer's or manufacturer's certificate of number for demonstration or testing purposes, government agency vessels, and non-profit rescue squad vessels shall not be subject to the titling requirements of G.S. 75A-34 and G.S. 75A-35 but shall remain subject to the certificate of numbering requirements of G.S. 75A-4 and G.S. 75A-7. An owner applying for a certificate of number and certificate of title of a vessel, shall apply to the Commission or to one of its vessel agents using an application available on the Commission website at [www.gooutdoorsnorthcarolina.com](http://www.gooutdoorsnorthcarolina.com). The application shall include the following information:

- (1) the name of the owners;
- (2) the address, telephone number, date of birth, and North Carolina driver license number of the owners;
- (3) the current or previous certificate of number, if applicable;
- (4) the desired period of certificate of number, either one or three years;
- (5) the primary operation of the vessel:

- (A) pleasure;
  - (B) rent or lease;
  - (C) dealer or manufacturer demonstration;
  - (D) commercial fishing;
  - (E) commercial passenger;
  - (F) other commercial;
  - (G) charter fishing; or
  - (H) other.
- (6) the model, if known;
- (7) the manufacturer, if known;
- (8) the year of manufacture or model year, if known;
- (9) the manufacturer's hull identification number, if any;
- (10) the overall length of the vessel in feet and inches;
- (11) the type of vessel:
- (A) open motorboat;
  - (B) cabin motorboat;
  - (C) houseboat;
  - (D) personal watercraft;
  - (E) pontoon;
  - (F) air boat;
  - (G) auxiliary sail;
  - (H) inflatable;
  - (I) paddlecraft/canoe;
  - (J) paddlecraft/kayak;
  - (K) rowboat;
  - (L) sail only; or
  - (M) other.
- (12) the hull material:
- (A) wood;
  - (B) aluminum;
  - (C) steel;
  - (D) fiberglass;
  - (E) rubber/vinyl/canvas;
  - (F) plastic; or
  - (G) other.
- (13) the type of propulsion:
- (A) propeller;
  - (B) sail;
  - (C) water jet;
  - (D) manual;
  - (E) air thrust; or
  - (F) other.
- (14) the type of fuel:
- (A) gasoline;
  - (B) diesel;
  - (C) electric; or
  - (D) other.
- (15) the engine drive type:
- (A) inboard;
  - (B) outboard;
  - (C) stern drive;
  - (D) pod drive;
  - (E) other; or
  - (F) none.
- (16) a proof of ownership document;
- (17) the signature of the owners;
- (18) the make of motor if over 25 horsepower, including serial number and purchase price of motor, if known;
- (19) the lien holder name, address, and telephone number, if applicable;
- (20) the effective lien date, if applicable;
- (21) the county where vessel is taxed; and
- (22) proof of United States Coast Guard documentation, if applicable.
- (c) Application for certificate of number and certificate of title. The owners shall complete and submit an application for a certificate of number, proof of ownership documents, and required fees to the Commission or one of its vessel agents for processing within 15 days of the date of sale. A new certificate of number shall be issued for new or never-before registered vessels. For a period of 60 days following the date of sale, the new owners may use a copy of the proof of ownership document as a temporary certificate of number pending receipt of the original certificate, provided it contains the date of sale. If required, a certificate of title shall be issued and the reported liens shall be recorded.
- (d) Rented or Leased Vessel Owners. Upon receipt of a completed application and a copy of the lease or rental agreement form and fee, the Commission shall issue to the applicant a certificate of number and, if applicable, a certificate of title.
- (e) Dealers and Manufacturers of Vessels. Upon receipt of a completed application and fee, the Commission shall issue to the applicant a certificate of number that may be used in connection with the operation of a vessel in the possession of the dealer or manufacturer when the vessel is being demonstrated. Dealer and manufacturer certificates of number shall not be transferred. A new certificate of number shall be issued upon sale or transfer. Demonstration vessels shall not be titled so long as the vessel is owned by the dealer or manufacturer. Vessels owned or possessed by dealers or manufacturers for personal use or for a use other than for demonstration and testing purposes shall be individually registered in the name of the dealer or manufacturer in accordance with the certificate of number requirements of Paragraph (b) of this Rule. Additional dealer or manufacturer certificates of number may be obtained by making application in the manner prescribed for the initial certificate with payment of a fee for each additional certificate. Dealers and manufacturers may register individual vessels in accordance with Rule .0104(a) of this Section.
- (f) Government Agency and Nonprofit Rescue Squad Vessels. Upon receipt of a completed application and proof of ownership documents from a government agency or non-profit rescue squad, the Commission shall issue to the applicant a permanent certificate of number. There shall be no fee for a permanent government agency or non-profit rescue squad certificate of number and the certificate shall be valid until the vessel is transferred to another government agency, an individual, a business, or a dealer. Government agency and nonprofit rescue squad registered vessels shall not be titled.
- (g) Commercial Fishing Vessel. The standard application for a certificate of number shall be used for commercial fishing vessels with the term "commercial fishing" marked in the section designated for "primary operation of the vessel." Upon receipt of a completed application, proof of ownership document, and fee,

the Commission shall issue to the applicant a certificate of number and, if applicable, a certificate of title.

(h) Commercial Passenger Vessel. Upon receipt of a completed application, proof of ownership document, and fee, the Commission shall issue to the applicant a certificate of number and, if applicable, a certificate of title.

*History Note: Authority G.S. 75A-3; 75A-5; 75A-7; 75A-19; 75A-34; 75A-35; 33 CFR 174.17;*

*Eff. February 1, 1976;*

*Amended Eff. August 31, 1980;*

*Legislative Objection Lodged Eff. December 16, 1980;*

*Amended Eff. July 1, 1988 at ARRC request to cure referenced Legislative Objection;*

*Amended Eff. August 1, 2014; May 1, 2007; July 1, 1998; April 1, 1997; November 1, 1993; August 1, 1988; July 1, 1988;*

*Readopted Eff. November 1, 2018;*

*Amended Eff. September 1, 2023.*

**15A NCAC 10F .0104 CERTIFICATE OF NUMBER**

(a) General. A completed application, a proof of ownership document, and the required fees as provided in G.S. 75A-5(a1) and G.S. 75A-5.2(c), are necessary for the Commission to issue a certificate of number authorizing the operation of a vessel. The certificate of number shall be carried by the individual operating the vessel and shall be available for inspection by a law enforcement officer when requested. The certificate of number shall be signed by the owners.

(b) Dealers and Manufacturers. A dealer or manufacturer demonstrating or testing a vessel may use a set of dealer numbers and the corresponding dealer certificate of number to operate a vessel held for sale for demonstration or testing purposes. Vessels owned or possessed by dealers or manufacturers for personal use or for a use other than for demonstration and testing purposes shall be individually registered in the name of the dealer in accordance with Paragraph (a) of this Rule.

*History Note: Authority G.S. 75A-3; 75A-5; 75A-5.2; 75A-7; 75A-19; 33 CFR 174.19;*

*Eff. February 1, 1976;*

*Amended Eff. August 31, 1980; January 1, 1980;*

*Legislative Objection Lodged Eff. December 16, 1980;*

*Amended Eff. May 1, 2007; July 1, 1998; April 1, 1997; July 1, 1988;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016;*

*Amended Eff. September 1, 2023; November 1, 2018.*

**15A NCAC 10F .0109 TEMPORARY CERTIFICATE OF NUMBER**

When a vessel owner completes a transaction to renew, or replace a certificate of number, or initiates a transaction for a new or transfer certificate of number, the owner shall be issued a temporary certificate of number. For up to 60 days following the date of the transaction, the vessel may be operated with the temporary certificate of number. The temporary certificate of number shall be signed by the owners.

*History Note: Authority G.S. 75A-3; 75A-5; 33 CFR 174.21;*

*Eff. April 1, 1997;*

*Amended Eff. May 1, 2007; July 1, 1998;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016;*

*Amended Eff. September 1, 2023; November 1, 2018.*

**15A NCAC 10F .0310 DARE COUNTY**

(a) Regulated Areas. This Rule shall apply to the following waters and portions of waters in Dare County:

- (1) Manteo:
  - (A) the waters of Doughs Creek off Shallowbag Bay and the canals off Shallowbag Bay; and
  - (B) within 50 yards of the Bowsertown Boating Access Area on Croatan Sound at 35.89810 N, 75.67710 W.
- (2) Hatteras:
  - (A) the waters of Pamlico Sound otherwise known as Hatteras Harbor and Muddy Creek bounded on the north and south by the high-water mark, on the west by a straight line between channel markers number 20 and 17 at the entrance to Hatteras Harbor, and on the east by the mouth of Muddy Creek at Sandy Bay at a point at 35.22801 N, 75.68050 W; and
  - (B) Hatteras Ferry Terminal and United States Coast Guard basins ending at Coast Guard Beacon Number One in the Hatteras Channel.
- (3) Manns Harbor:
  - (A) Old Ferry Dock Road Canal, beginning at a point at 35.90654 N, 75.76916 W;
  - (B) within 50 yards of the Manns Harbor Boating Access Area on Croatan Sound at 35.91020 N, 75.77150 W; and
  - (C) within 50 yards of the Mashoes Boating Access Area on East Lake at 35.92820 N, 75.81470 W.
- (4) Nags Head:
  - (A) the canals of Old Nags Head Cove where the canal entrance meets Roanoke Sound beginning at a point at 35.94192 N, 75.62571 W; and
  - (B) the Roanoke Sound inlets at Pond Island on either side of W. Marina Drive extending north from U.S. Highway 64-264.
- (5) Wanchese:
  - (A) Wanchese Harbor otherwise known as Mill Landing Creek, beginning at its entrance from Roanoke Sound at a point at 35.84006 N, 75.61726 W; and
  - (B) the canal from its beginning where it connects with Roanoke Sound south of the dead-end road S.R. 1141

- otherwise known as Thicket Lump Drive, extending northwest roughly parallel to S.R. 1141, S.R. 1142 otherwise known as The Lane, and S.R. 1143 otherwise known as Tink Tillet Road, then westward roughly parallel to N.C. Highway 345, and finally curving to the southwest roughly parallel to S.R. 1289 otherwise known as C B Daniels S.R. Road to its end.
- (6) Stumpy Point:
- (A) Stumpy Point Canal shore to shore on Pamlico Sound, beginning 50 yards west of the Stumpy Point Boating Access Area, 321 Bayview Drive; and
- (B) Stumpy Point Basin off Stumpy Point Bay, east of U.S. Highway 264 where it intersects Stumpy Point Bay at a point at 35.69591 N, 75.77264 W.
- (7) Rodanthe. Within 50 yards of the Rodanthe Boating Access Area in Roanoke Sound, 23170 Myrna Peters Road;
- (8) Town of Southern Shores. The canals and lagoons within the Town of Southern Shores north of U.S. Highway 158;
- (9) Colington Harbour. The waters in the canals of Colington Harbour Subdivision on Albemarle Sound;
- (10) Kitty Hawk. The waters in the canals of Kitty Hawk Landing Subdivision;
- (11) Washington Baum Bridge Boating Access Area. The waters within 150 yards north and south and 300 yards east of the Washington Baum Boating Access Area in Roanoke Sound, at 35.89380 N, 75.63710 W;
- (12) Kill Devil Hills:
- (A) Baum Bay Harbor, beginning at a point at 36.00572 N, 75.68105 W; and
- (B) the waters within 50 yards of the Avalon Beach Boating Access Area in Kitty Hawk Bay, 2025 Bay Drive.
- (13) Avon. The waters of Pamlico Sound shore to shore beginning at a line from a point on the east shore of Big Island at 35.36653 N, 75.50770 W westward to a point on the mainland at 35.36653 N, 75.50556 W, south to include the waters of the cove between North Albacore Lane and South Albacore Lane and the waters of Mill Creek, and ending east of a line from a point on the south shore of Big Island at 35.36500 N, 75.50820 W southward to a point on the mainland at 35.36358 N, 75.50826 W;
- (14) Jean Guite Creek. The waters of Jean Guite Creek from where it meets Kitty Hawk Bay at 36.04887 N, 75.72754 W, north to a line from a point on the east shore in Southern Shores at 36.10460 N, 75.74192 W to a point on the west shore in Martin's Point Subdivision at 36.10452 N, 75.73948 W;
- (15) Frisco. The waters of the marina canal and boat basin at Palmetto Shores Subdivision, shore to shore beginning at the canal's entrance at Pamlico Sound at a point at 35.25427 N, 75.60301 W; and
- (16) Cape Hatteras National Seashore. The waters of Motts Creek in Roanoke Sound, shore to shore at a line from a point on the north shore where the Oregon Inlet U.S. Coast Guard Station is located, to a point near the south shore of Motts Creek at 35.792070 N, 75.54903 W, then northward to include the waters at the Oregon Inlet Fishing Center and Marina, Oregon Inlet Public Boat Ramp, kayak launch area, and U. S. Coast Guard Station and Launch Area.
- (b) Speed Limit. No person shall operate a vessel at greater than no-wake speed within the regulated areas described in Paragraph (a) of this Rule.
- (c) Swimming Area. No person operating or responsible for the operation of a vessel shall permit it to enter the marked swimming area at Colington Island on the west shore, from a point where the canal enters the harbor at 36.01797 N, 75.72681 W, north 600 feet to a point at 36.01964 N, 75.72683 W and extending 300 feet west into Albemarle Sound.
- (d) Placement of Markers. The following agencies shall place markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers:
- (1) the Board of Commissioners of the Town of Manteo for the areas designated in Part (a)(1)(A) of this Rule;
- (2) the Board of Commissioners of Dare County for the areas designated in Paragraph (c), Subparagraphs (a)(2); (a)(4); (a)(5); (a)(9); (a)(13) through (15); and Parts (a)(3)(A); (a)(6)(B); and (a)(12)(A) of this Rule;
- (3) the Board of Commissioners of the Town of Southern Shores for the areas designated in Subparagraph (a)(8) of this Rule;
- (4) the Board of Commissioners of the Town of Kitty Hawk for the area designated in Subparagraph (a)(10) of this Rule;
- (5) the National Park Service for the area designated in Subparagraph (a)(16) of this Rule; and
- (6) the North Carolina Wildlife Resources Commission for the areas designated in Subparagraphs (a)(7) and (a)(11); and Parts (a)(1)(B); (a)(3)(B) and (C); (a)(6)(A); and (a)(12)(B) of this Rule.

*History Note: Authority G.S. 75A-3; 75A-15; Eff. February 1, 1976; Amended Eff. April 1, 1997; December 1, 1994; May 1, 1994; March 1, 1993; May 1, 1988; Temporary Amendment Eff. February 1, 1999; July 1, 1998; Amended Eff. July 1, 2000; April 1, 1999;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016; Amended Eff. September 1, 2023; October 1, 2022; October 1, 2018.*

**15A NCAC 10F .0374 CUBE HYDRO CAROLINAS SAFETY ZONES AND RESTRICTED ZONES AREAS**

(a) Regulated Areas. This Rule shall apply to the following hydroelectric stations, dams, associated structures, abutments, and equipment:

- (1) High Rock Hydroelectric Station on the Yadkin River in Rowan and Davidson counties;
- (2) Tuckertown Hydroelectric Station on the Yadkin River in Stanly and Montgomery counties;
- (3) Narrows Hydroelectric Station on the Yadkin River in Stanly and Montgomery counties; and
- (4) Falls Hydroelectric Station on the Yadkin River in Stanly and Montgomery counties.

(b) Safety Zones. Except for Cube Hydro Carolinas and Commission personnel, no entry shall be allowed in the waters listed below unless authorized by Cube Hydro Carolinas:

- (1) Yadkin River in Rowan and Davidson counties, 200 feet downstream from the powerhouse, turbines, or generator discharge that mechanically propels or accelerates the flow of water at the High Rock Hydroelectric Station;
- (2) Yadkin River in Stanly and Montgomery counties, 200 feet downstream from the powerhouse, turbines, or generator discharge that mechanically propels or accelerates the flow of water at the Tuckertown Hydroelectric Station;
- (3) Yadkin River in Stanly and Montgomery counties, one hundred feet directly in front of the powerhouse, turbines, or generator discharge that mechanically propels or accelerates the flow of water at the Narrows Hydroelectric Station; and
- (4) Yadkin River in Stanly and Montgomery counties, 100 feet downstream from the powerhouse, turbines, or generator discharge that mechanically propels or accelerates the flow of water at the Falls Hydroelectric Station.

(c) Restricted Areas. Restricted Areas shall be located 200 feet upstream and 200 feet downstream from the hydroelectric stations described in Paragraph (a) of this Rule. Individuals in or upon a vessel in a restricted area shall wear a U.S. Coast Guard-approved personal flotation device as described in Rule .0201 of this Subchapter.

(d) Swimming. Swimming shall be prohibited in restricted areas.

(e) Firearms. No person shall discharge a firearm within a restricted area.

(f) No vessel shall tie off to the hydroelectric station structure or the accessory structures, anchor, or secure a vessel in the restricted areas described in Paragraph (a) of this Rule.

(g) Paragraph (f) of this Rule shall not apply to persons who enter with consent of Cube Hydro Carolinas to maintain, repair, or evaluate facilities of Cube Hydro Carolinas; law enforcement or

emergency personnel; or State employees acting in an official capacity.

(h) Placement and Maintenance of Markers. Cube Hydro Carolinas shall place and maintain buoys and other signs implementing this Rule.

*History Note: Authority G.S. 75A-3; 75A-15;*

*Eff. January 1, 2008;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016;*

*Amended Eff. September 1, 2023; October 1, 2018.*

**TITLE 20 - DEPARTMENT OF STATE TREASURER**

<b>20 NCAC 03 .0701</b>	<b>GENERAL INFORMATION</b>
<b>20 NCAC 03 .0702</b>	<b>DEFINITION OF TERMS</b>
<b>20 NCAC 03 .0703</b>	<b>MINIMUM FUND STANDARDS</b>
<b>20 NCAC 03 .0704</b>	<b>REQUIREMENTS FOR THE RFP</b>
<b>20 NCAC 03 .0705</b>	<b>ISSUANCE OF THE RFP</b>
<b>20 NCAC 03 .0706</b>	<b>CERTIFICATION AND</b>
	<b>TERMINATION OF MANAGER</b>
<b>20 NCAC 03 .0707</b>	<b>TERMINATION FOR CAUSE</b>
<b>20 NCAC 03 .0708</b>	<b>REVIEW OF MANAGER</b>
<b>20 NCAC 03 .0709</b>	<b>DELEGATION OF AUTHORITY</b>

*History Note: Authority G.S. 159-3(f); 159-30(c)(6a); 159-30(c)(7);*

*Eff. February 1, 1982;*

*Amended Eff. April 1, 1985; April 1, 1987; October 1, 2017;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018;*

*Repealed Eff. October 1, 2023.*

**20 NCAC 03 .0710 GENERAL INFORMATION**

Correspondence required by the rules of this Section shall be addressed to: Secretary, Local Government Commission, Department of State Treasurer, 3200 Atlantic Avenue, Raleigh, North Carolina 27604 or emailed to SLGFD@nctreasurer.com.

*History Note: Authority G.S. 159-3(f); 159-30(c)(8);*

*Eff. October 1, 2023.*

**20 NCAC 03 .0711 DEFINITION OF TERMS**

The following words and phrases used in this Section are defined as follows:

- (1) "Active Participants" means Eligible Participants that are currently invested in a Fund.
- (2) "Affiliate" means, with respect to a party, any person, entity, or organization that either directly or indirectly controls, is controlled by, or is under common control with such party, including any employee, officer, or director of such party.
- (3) "Broker-Dealer" means either a "broker" or a "dealer" as both are defined in the Securities Exchange Act of 1934 which is incorporated by reference, including subsequent amendments

- and editions and is available online, at <https://uscode.house.gov/browse/prelim@title15/chapter2B&edition=prelim> at no cost.
- (4) "Certified Money Market Mutual Fund" means a mutual fund certified pursuant to this Section which meets the definition of "Money Market Mutual Fund" in this Rule.
  - (5) "Certified Mutual Fund" means a mutual fund certified pursuant to this Section which does not meet the definition of "Money Market Mutual Fund" in this Rule.
  - (6) "Decertification Period" means the period of time beginning on the date the Commission adopts a resolution terminating the certification of a Fund and ending in 30 calendar days or on a date specified in the resolution.
  - (7) "Eligible Participants" means the following North Carolina entities: local governments and public authorities as defined in G.S. 159-7, school administrative units, local ABC boards, community colleges, public hospitals, and other entities authorized by North Carolina law to use forms of investment allowed by G.S. 159-30.
  - (8) "Fund" means a mutual fund certified pursuant to this Section.
  - (9) "Manager" means the investment adviser managing a Fund certified pursuant to this Section as required by Rule .0712(f) of this Section.
  - (10) "Money Market Mutual Fund" means a money market fund that complies with 17 C.F.R. 270.2a-7 and which maintains a stable one-dollar net asset value (NAV) per share.
  - (11) "Reporting Event" means any of the following which either is a public record or is required by law to be reported to the Active Participants:
    - (a) an administrative, civil, or criminal enforcement action taken pursuant to federal or state law against a Fund, a Manager, or an Affiliate of a Fund or Manager;
    - (b) a notice from the SEC that SEC staff intends to recommend an enforcement action against a Fund, or, with respect to services provided to the relevant Fund, against a Manager or an Affiliate of a Fund or Manager; or
    - (c) a non-routine inquiry or investigation pursuant to securities law or regulation by the SEC or other federal, state, or self-regulatory body or organization against a Fund, a Manager, or an Affiliate of a Fund or Manager.
  - (12) "SEC" means the U.S. Securities and Exchange Commission.

**20 NCAC 03 .0712 MINIMUM FUND STANDARDS**

- (a) A Fund may only invest in securities permitted by G.S. 159-30(c). A Fund shall not purchase any security with a maturity exceeding seven years.
- (b) A Fund shall be registered with the SEC as an investment company pursuant to the Investment Company Act of 1940 and shall comply with all applicable SEC rules, regulations, and reporting requirements. The SEC requirements of 17 CFR Chapter 2 are incorporated by reference, including subsequent amendments and editions, and are available online, at <https://www.ecfr.gov/current/title-17/chapter-II> at no cost. SEC registration and compliance do not modify the requirement that a Fund comply with G.S. 159-30. The Investment Company Act of 1940 is incorporated by reference, including subsequent amendments and editions and is available online, at <https://uscode.house.gov/browse/prelim@title15/chapter2D/subchapter1&edition=prelim> at no cost.
- (c) A Fund shall be established and operated in such a manner that any local, state, or federal income tax liability shall be passed through to the Active Participants.
- (d) A Fund shall periodically report performance in conformance with SEC rules and regulations, 17 CFR Chapter 2, and the reports shall include at least annually the Fund's performance against the benchmarks assigned by the Fund. A Fund shall assign a benchmark that meets the following requirements:
  - (1) is unaffiliated with the Fund's Manager;
  - (2) is specified in advance; and
  - (3) is representative of the Fund's current investment strategy and parameters.
- (e) A Fund shall calculate a daily net asset value according to US "generally accepted accounting principles" (GAAP) and allow investors to transact daily at the net asset value.
- (f) A Fund shall be managed by an investment adviser registered with either the SEC as an investment adviser pursuant to the Investment Advisers Act of 1940, or the North Carolina Secretary of State as an investment adviser pursuant to the North Carolina Investment Advisers Act, and such investment adviser shall comply with all applicable federal and state rules, regulations, and reporting requirements. The Investment Advisers Act of 1940 is incorporated by reference, including subsequent amendments and editions and is available online, at <https://uscode.house.gov/browse/prelim@title15/chapter2D/subchapter2&edition=prelim> at no cost. The North Carolina Investment Advisers Act, G.S. 78C is incorporated by reference, including subsequent amendments and editions and is available online, at [https://ncleg.gov/EnactedLegislation/Statutes/HTML/ByChapter/Chapter\\_78C.html](https://ncleg.gov/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_78C.html) at no cost.
- (g) The sale and marketing of a Fund shall adhere to all applicable federal and state laws and regulations.
- (h) A Fund shall bear one of the two highest ratings of at least one nationally recognized rating service and shall not bear a rating below one of the two highest ratings by any nationally recognized rating service which rates the Fund.
- (i) A Fund shall disclose prominently in its prospectus, marketing materials, and communications with Eligible Participants and Active Participants that it invests only in those securities that are authorized for investment by units of local government pursuant to G.S. 159-30(c)(8) and this Section.

*History Note: Authority G.S. 159-3(f); 159-30(c)(8); Eff. October 1, 2023.*

(j) A Certified Mutual Fund shall disclose prominently in its prospectus, marketing materials, and communications with Eligible Participants and Active Participants that, in contrast to a Certified Money Market Mutual Fund, such Certified Mutual Fund does not seek to maintain a stable one-dollar net asset value (NAV) per share.

*History Note: Authority G.S. 159-3(f); 159-30(c)(8); Eff. October 1, 2023.*

**20 NCAC 03 .0713 CERTIFICATION OF A FUND**

(a) A prospective Manager may request certification of a Fund by submitting a proposal to the Secretary containing the following information:

- (1) the name of the Fund;
- (2) the address of the Fund;
- (3) the Fund prospectus;
- (4) the most recent holdings report;
- (5) the most recent annual report;
- (6) an attestation that the Fund meets, and shall maintain compliance with, the minimum Fund standards set forth in Rule .0712 of this Section;
- (7) if the Fund is seeking certification as a Money Market Mutual Fund, an attestation that the Fund meets, and shall maintain compliance with, the definition in Rule .0711 of this Section of Money Market Mutual Fund; and
- (8) a list of all Broker-Dealers selling or marketing the Fund.

(b) The Commission shall review the proposal and may request supporting information as needed to assist in its review of the proposal.

(c) If the Commission certifies a Fund, it shall certify the Fund as a "Certified Money Market Mutual Fund," if the Fund is a Money Market Mutual Fund as defined in Rule .0711 of this Section; otherwise, it shall certify the Fund as a "Certified Mutual Fund."

(d) Certification is effective the day after the Commission adopts a resolution certifying the Fund and is effective until termination of certification pursuant to Rule .0715 of this Section.

*History Note: Authority G.S. 159-3(f); 159-30(c)(8); Eff. October 1, 2023.*

**20 NCAC 03 .0714 REVIEW OF FUND AND ATTESTATION**

(a) Beginning one year after the effective date of the certification of a Fund, and by December 31 each year thereafter, the Manager shall submit an attestation to the Secretary:

- (1) attesting that the Fund continues to meet the minimum Fund standards provided in Rule .0712 of this Section;
- (2) listing all Reporting Events from the date of the prior attestation provided to the Secretary or, in the case of the first attestation of a Fund, all Reporting Events from the date of the initial submission of proposal for certification, and attesting that no other Reporting Event has occurred;

(3) attesting that the sale and marketing of the Fund adheres to all applicable federal and state laws and regulations;

(4) if the Fund is a Certified Money Market Mutual Fund, attesting that the Fund continues to comply with the definition of Certified Money Market Mutual Fund in Rule .0711 of this Section;

(5) providing a list of the Broker-Dealers selling or marketing the Fund;

(6) providing a holdings report including all holdings from the date of the prior attestation provided to the Secretary or, in the case of the first attestation of a Fund, all holdings from the date of the holdings report provided in the initial submission of proposal for certification; and

(7) providing the most recent Fund prospectus and annual report.

(b) The Commission may request additional attestations at any time to review and confirm compliance of the Fund with the rules in this Section.

(c) Any changes to a Fund's or investment adviser's federal or state registration documents shall be reported to the Secretary within 30 days of the filing of the updated registration documents, with all changes marked and identified.

(d) The Manager shall, upon receiving a request from the Commission, provide documentation supporting an attestation with specific reference to the location within such supporting documentation which demonstrates that the minimum Fund standards of Rule .0712 of this Section have been met.

(e) The Manager shall provide to the Commission access to all Fund documents and shall allow the Commission to make any examinations the Commission deems required to ensure compliance with the rules of this Section, and shall provide to the Commission copies of all Fund documents requested by the Commission at the expense of the Manager of the Fund.

*History Note: Authority G.S. 159-3(f); 159-30(c)(8); Eff. October 1, 2023.*

**20 NCAC 03 .0715 TERMINATION OF CERTIFICATION**

(a) The Commission may adopt a resolution terminating the certification of a Fund due to one or more of the following:

- (1) A Manager or a Fund violates any of the rules in this Section and the Commission finds that there has been a material adverse effect on the Fund or the interests of the Active Participants.
- (2) A Fund fails to meet a federal or state legal requirement and the Commission finds that there has been a material adverse effect on the Fund or the interests of the Active Participants.
- (3) A Fund fails to submit an attestation pursuant to Rule .0714 of this Section within 30 calendar days of the due date.
- (4) The Manager of a Fund requests termination of certification.
- (5) A Fund is dissolved or terminated.

(6) A Reporting Event has occurred, and the Commission finds that there has been a material adverse effect on the Fund or the interests of the Active Participants.

(b) A Decertification Period shall commence upon the Commission's adoption of a resolution terminating certification of a Fund, during which time the Manager of the Fund shall notify the Active Participants of the termination of certification and provide instructions on withdrawing assets from the Fund.

(c) Termination of certification shall be effective upon the conclusion of the Decertification Period.

*History Note: Authority G.S. 159-3(f); 159-30(c)(8); Eff. October 1, 2023.*

**TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS**

**CHAPTER 08 – BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS**

**21 NCAC 08F .0103 FILING OF EXAMINATION APPLICATIONS AND FEES**

(a) All applications for CPA examinations shall be filed with the Board and accompanied by the examination fee. The Board sets the fee for each examination at the amount that enables the Board to recover its actual costs of examination services. If a check or credit card authorization fails to clear the bank, the application shall be deemed incomplete and returned. CPA examination applications and fee information are on the Board's website at [nccpaboard.gov](http://nccpaboard.gov) and may be requested from the Board.

(b) The initial application filed to take the examination shall include supporting documentation demonstrating that all legal requirements have been met, including:

- (1) minimum legal age;
- (2) education; and
- (3) good moral character.

(c) In addition, any person born outside the United States shall furnish to the Board office:

- (1) evidence of citizenship; or
- (2) evidence of resident alien status; or
- (3) other bona fide evidence that the applicant is legally allowed to remain in the United States; or
- (4) a notarized affidavit of intention to become a U.S. citizen; or
- (5) evidence that the applicant is a citizen of a foreign jurisdiction that extends to citizens of this State like or similar privileges to be examined.

(d) Education and satisfaction of degree requirements shall be proven by submission of either original official transcripts, not photocopies, signed by the college registrar and bearing the college seal or by electronic delivery of official transcripts directly from the college registrar or through the institution's chosen provider. A letter from the college registrar of the school may be filed as documentation that the applicant has met the graduation requirements if the degree has not been awarded and

posted to the transcript. No examination grades shall be released until an official transcript is filed with the Board confirming the education requirement as stated in the college registrar's letter.

(e) Applicants for re-examination shall not re-submit official transcripts, additional statements, or affidavits regarding education.

(f) To document good moral character as required by G.S. 93-12(5), three persons not related by blood or marriage to the applicant shall sign the application certifying the good moral character of the applicant and the Board shall conduct a background check of the applicant including a check of criminal records.

(g) An applicant shall include as part of any application for the CPA examination a statement of explanation and a certified copy of the final disposition if the applicant has been arrested, charged, convicted or found guilty of, received a prayer for judgment continued, or pleaded nolo contendere to any criminal offense. An applicant shall not be required to disclose any arrest, charge, or conviction that has been expunged by a court.

(h) If an applicant has been denied any license by any state or federal agency, the applicant shall include as part of the application for the CPA examination a statement explaining such denial. An applicant shall include a statement of explanation and a certified copy of applicable license records if the applicant has been registered with or licensed by a state or federal agency and has been disciplined by that agency.

(i) An applicant shall submit one photograph or digital image as part of the application for the CPA examination. The photograph or digital image shall be of the applicant alone, front view, full face, taken in normal street attire without a hat or dark glasses, with a plain light background, and taken within the last six months. The photograph or digital image may be in black and white or in color. Retouched photographs or digital images shall not be accepted. If submitting a photograph, applicants shall write their names on the back of their photograph, with the photograph two by two inches in size.

(j) If an applicant's name has legally changed and is different from the name on any transcript or other document supplied to the Board, the applicant shall furnish copies of the documents legally authorizing the name change.

(k) Candidates shall file initial and re-exam applications to sit for the CPA examination on forms provided by the Board.

(l) Examination fees are valid for a six-month period from the date of the applicant's notice to schedule for the examination from the examination vendor.

(m) No application for examination shall be considered while the applicant is serving a sentence for any criminal offense. Serving a sentence includes incarceration, probation (supervised or unsupervised), parole, or conditionally suspended sentence, any of which are imposed as a result of having been convicted or having pled to a criminal charge.

*History Note: Authority G.S. 93-2; 93-10; 93-12(3); 93-12(4); 93-12(5); 93-12(7); Eff. February 1, 1976; Readopted Eff. September 26, 1977; Amended Eff. January 1, 2014; February 1, 2011; January 1, 2006; January 1, 2004; August 1, 1998; February 1, 1996; April 1, 1994; March 1, 1990; May 1, 1989;*

*Readopted Eff. February 1, 2016;  
Amended Eff. September 1, 2023; February 1, 2018.*

**21 NCAC 08F .0105      CONDITIONING  
REQUIREMENTS**

- (a) **Passing Grades.** A candidate shall pass all sections of the examination with a grade of 75 or higher on each section.
- (b) **Military Service.** A candidate who is on active military service shall not have the time on active military service counted against Subparagraph (c)(1) of this Rule unless the candidate applies to take the examination during the active military service, in which case each month a candidate sits shall be counted toward Subparagraph (c)(1) of this Rule.
- (c) A candidate is subject to the following conditioning requirements:
  - (1) a candidate shall earn a passing grade on all sections of the examination within an 18-month period;
  - (2) a candidate may sit for any section of the examination individually and in any order;
  - (3) a candidate may retake the same section of the examination as many times during a one-year period as determined by the examination vendors but shall not retake a failed test section until the candidate has been notified of the score of the most recent attempt of that failed section;
  - (4) credit awarded by the Board for passage of a section of the examination shall be valid for an 18-month period from the date the passing scores are released by the examination vendors;
  - (5) the 18-month period begins on the date the first passing score is released to the candidate and concludes with the sit date of the final passed examination section, regardless of when the score is released by the examination vendors for the final passed section. A candidate, after earning credit for the initial passed section, must complete the remaining test sections of the examination by the last day of the 18-month period. If all four sections of the examination are not passed within the 18-month period, credit for any test section passed outside of the 18-month period shall expire; and
  - (6) notwithstanding Subparagraphs (c)(1), (c)(4), and (c)(5) of this Rule, the period of time in which to pass all test sections of the examination may be extended by the Board upon a showing that the credit was lost by reason of circumstances beyond the testing candidate's control.

*History Note: Authority G.S. 93-12(3); 93-12(4); 93-12(5);  
Eff. February 1, 1976;  
Readopted Eff. September 26, 1977;  
Amended Eff. February 1, 2011; January 1, 2006; January 1, 2004; August 1, 1998; April 1, 1994; April 1, 1991; March 1, 1990;  
Readopted Eff. February 1, 2016;  
Amended Eff. September 1, 2023; January 1, 2020.*

**21 NCAC 08F .0401      WORK EXPERIENCE  
REQUIRED OF CANDIDATES FOR CPA  
CERTIFICATION**

- (a) G.S. 93-12(5)(c) sets forth work experience alternatives, one of which is required of candidates applying for CPA certification. In connection with those requirements, the following provisions apply:
  - (1) the work experience shall be acquired prior to the date a candidate applies for certification; and
  - (2) all experience that is required shall be under the direct supervision of a licensed CPA on active status in one of the U.S. states or jurisdictions.
- (b) The following provisions apply to all candidates seeking to meet the work experience requirement of G.S. 93-12(5)(c)(3) by working in the field of accounting:
  - (1) One year of work experience is 52 weeks of full-time employment. The candidate is employed full-time when the candidate is expected by the employer to work for the employer at least 30 hours each week. Any other work is working part-time.
  - (2) All weeks of actual full-time employment are added to all full-time equivalent weeks in order to calculate how much work experience a candidate has acquired. Dividing that number by 52 results in the years of work experience the candidate has acquired.
  - (3) Full-time-equivalent weeks are determined by the number of actual part-time hours the candidate has worked. Actual part-time hours do not include hours paid for sick leave, vacation leave, attending continuing education courses, or other time not spent directly performing accounting services. For each calendar week during which the candidate worked actual part-time hours of 30 hours or more, the candidate receives one full-time-equivalent week. The actual part-time hours worked in the remaining calendar weeks are added together and divided by 30. The resulting number is the additional number of full-time-equivalent weeks to which the candidate is entitled.
  - (4) The candidate shall submit experience affidavits on a form provided by the Board from all of the relevant employers; provided that when such experience was not acquired while employed with a CPA firm, the candidate shall also submit details of the work experience and supervision on a form provided by the Board. Experience affidavits for part-time work shall contain a record of the actual part-time hours the candidate has worked for each week of part-time employment. Both the experience affidavit and the form for additional detail shall be certified by the employer's office supervisor or an owner of the firm who is a certificate holder.

(c) Rule .0409 of this Section applies to teaching experience acquired pursuant to G.S. 93-12(5)(c)(2) and (4).

*History Note: Authority G.S. 93-12(3); 93-12(5); Eff. February 1, 1976;  
Readopted Eff. September 26, 1977;  
Temporary Amendment Eff. June 17, 1982 for a period of 120 days to expire on October 12, 1982;  
Legislative Objection Lodged Eff. July 20, 1982;  
Amended Eff. February 1, 2011; January 1, 2006; August 1, 1998; March 1, 1990; July 1, 1989; December 1, 1988; September 1, 1988;  
Readopted Eff. February 1, 2016;  
Amended Eff. September 1, 2023.*

**21 NCAC 08F .0410 EDUCATION REQUIRED OF CANDIDATES FOR CPA CERTIFICATION**

(a) G.S. 93-12(5)(a) sets forth the education required of candidates applying for CPA certification. The 150 semester hours required include:

- (1) a concentration in accounting, as defined by 21 NCAC 08A .0309; and
- (2) 24 semester hours of coursework that includes one three semester hour course from at least 8 of the following 10 fields of study:
  - (A) communications;
  - (B) computer technology;
  - (C) economics;
  - (D) ethics;
  - (E) finance;
  - (F) humanities or social science;
  - (G) international environment;
  - (H) law;
  - (I) management; or
  - (J) statistics.

(b) Anyone applying for CPA certification who holds a Master's or more advanced degree in accounting, tax law, economics, finance, business administration, or a law degree from an accredited college or university is in compliance with Subparagraph (a)(2) of this Rule.

*History Note: Authority G.S. 93-12(5); Eff. January 1, 2001;  
Amended Eff. February 1, 2011; January 1, 2006;  
Readopted Eff. February 1, 2016;  
Amended Eff. September 1, 2023.*

**21 NCAC 08H .0101 RECIPROCAL CERTIFICATES**

(a) Unless utilizing a practice privilege per G.S. 93-10(a), a person having a CPA certificate from another jurisdiction who desires to utilize the CPA title in this State or offer or render professional services as a CPA to his or her employer or a client in this State shall obtain a reciprocal North Carolina CPA certificate.

(b) The fee for a reciprocal certificate shall be the maximum amount allowed by G.S. 93-12(7a).

(c) An applicant for a reciprocal certificate shall meet the following requirements:

- (1) The applicant has the legal authority to use the CPA title and to practice public accountancy in a United States jurisdiction; and
- (2) The applicant has received a passing score on each section of the Uniform CPA Examination.

*History Note: Authority G.S. 93-12(6); 93-12(7a); Eff. February 1, 1976;  
Readopted Eff. September 26, 1977;  
Amended Eff. February 1, 2011; January 1, 2006; April 1, 2003; April 1, 1999; August 1, 1998; September 1, 1992; March 1, 1990; May 1, 1989; June 1, 1988;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 28, 2014;  
Amended Eff. September 1, 2023.*

**21 NCAC 08J .0112 RETIRED STATUS - CHANGE OF STATUS**

(a) A CPA on active or inactive status may apply to the Board for a change to CPA-retired status if that CPA completes an application provided by the Board confirming the following:

- (1) they will not perform any of the services listed in 21 NCAC 08A .0307(2) except that:
  - (A) they may prepare tax returns for themselves and their immediate family members without compensation. Immediate family is defined as spouse, domestic partner, parent, child, sibling, stepparent, parent-in-law, stepchild, child-in-law, grandparent, grandchild, sibling-in-law, or legal dependent; and
  - (B) they may prepare tax returns through public service programs without compensation, such as the Volunteer Income Tax Assistance program.
- (2) they will not hold themselves out to the public as a certified public accountant while they remain on CPA-retired status except that they may use the designation "CPA-retired".
- (3) they consent to the continued regulatory authority of the Board.

(b) Individuals on CPA-retired status may receive compensation for any services that are not listed in 21 NCAC 08A .0307(2).

(c) Individuals on CPA-retired status must renew their certificate annually as set forth in 21 NCAC 08J .0101. However, individuals on CPA-retired status are exempt from the Board's annual CPE requirements.

(d) In addition to the requirements in Paragraph (a) of this Rule, the application to move from inactive status to CPA-retired status will also contain the requirements set forth in 21 NCAC 08F .0502. However, the application will not require an experience affidavit or three certificates of good moral character.

(e) An individual on CPA-retired status may change to active status by:

- (1) furnishing the Board with evidence of satisfactory completion of 40 hours of CPE courses during the 12-month period immediately preceding the application for change of status. Eight of the required hours

shall be credits derived from a course or examination in North Carolina accountancy statutes and rules (including the Code of Professional Ethics and Conduct as set forth in 21 NCAC 08N contained therein) as set forth in 21 NCAC 08F .0504; and

- (2) submitting three certificates of good moral character completed by CPAs on active status.

*History Note:* Authority G.S. 93-12(3); 93-12(8); 93-12(8b); Eff. September 1, 2023.

**21 NCAC 08M .0105 PEER REVIEW REQUIREMENTS**

(a) A CPA or CPA firm providing any of the following services to the public shall participate in a peer review program:

- (1) audits;
- (2) reviews of financial statements;
- (3) compilations of financial statements; or
- (4) any engagement to be performed in accordance with the Statements on Standards for Attestation Engagements.

(b) A CPA or CPA firm not providing any of the services listed in Paragraph (a) of this Rule is exempt from peer review until the issuance of the first report provided to a client. A CPA or CPA firm shall register with the peer review program as listed in Paragraph (d) of this Rule within 30 days of the issuance of the first report provided to a client.

(c) A CPA, a new CPA firm, or a CPA firm exempt from peer review that starts providing any of the services in Paragraph (a) of this Rule shall furnish to the peer review program selected financial statements, corresponding work papers, and any additional information or documentation required for the peer review program within 18 months of the issuance of the first report provided to a client.

(d) Participation in and completion of the AICPA Peer Review Program, or a program that substantially complies with the AICPA Standards for Performing and Reporting on Peer Reviews, shall be required. The AICPA Standards for Performing and Reporting on Peer Reviews are incorporated by reference, including subsequent amendments and editions. This document may be accessed at <https://us.aicpa.org/research/standards/peerreview> at no cost.

(e) CPA firms shall not rearrange their structure or act in any manner with the intent to avoid participation in peer review.

(f) A CPA firm that does not have offices in North Carolina and that has provided any services as listed in G.S. 93-10(c)(3) to North Carolina clients shall participate in a peer review program.

(g) Subsequent peer reviews of a CPA firm are due three years and six months from the year end of the 12-month period of the first peer review, unless granted an extension by the peer review program.

(h) All CPA firms enrolled in the AICPA Peer Review Program shall also participate in the AICPA Facilitated State Board Access process.

*History Note:* Authority G.S. 93-10(c); 93-12(8c); Eff. January 1, 2004;

*Amended Eff. January 1, 2014; February 1, 2011; January 1, 2006;*

*Readopted Eff. February 1, 2016;*

*Amended Eff. September 1, 2023.*

**21 NCAC 08N .0205 CONFIDENTIALITY**

(a) Nondisclosure. A CPA shall not disclose any confidential information obtained in the course of employment or a professional engagement except with the consent of the employer or client.

(b) Exceptions. This Rule shall not be construed:

- (1) to relieve a CPA of any reporting obligations pertaining to Section .0400 of this Subchapter;
- (2) to affect in any way the CPA's compliance with an order of a court or a validly issued subpoena by this Board;
- (3) to preclude the CPA from responding to any inquiry made by the AICPA Ethics Division or Trial Board, by a duly constituted investigative or disciplinary body of a state CPA society, or under state statutes;
- (4) to preclude the disclosure of confidential client information necessary for the peer review process;
- (5) to preclude the CPA from assisting the Board in enforcing the accountancy statutes and rules;
- (6) to affect a CPA's disclosure of confidential information to state or federal authorities when the CPA concludes in good faith based upon professional judgment that a crime is being or is likely to be committed;
- (7) to affect a CPA's disclosure of confidential information when such disclosure is required by state or federal laws or regulations; or
- (8) to prohibit a CPA from revealing information:
  - (A) in order to establish a claim or defense on behalf of the CPA in a controversy between the CPA and a client;
  - (B) to establish a defense to a criminal charge or civil claim against the CPA based upon conduct in which the client was involved; or
  - (C) to respond to allegations in any proceeding concerning the CPA's professional services to the client.

*History Note:* Authority G.S. 55B-12; 57D-2-02; 93-12(9); Eff. April 1, 1994;

*Amended Eff. February 1, 2004; April 1, 2003;*

*Readopted Eff. February 1, 2016;*

*Amended Eff. September 1, 2023.*

**21 NCAC 08N .0209 ACCOUNTING PRINCIPLES**

(a) Generally Accepted Accounting Principles. A CPA shall not express an opinion that financial statements are presented in conformity with generally accepted accounting principles if such statements contain any departure from an accounting principle that has a material effect on the statements taken as a whole, unless the CPA can demonstrate that due to unusual

circumstances the financial statements would otherwise have been misleading. In such cases the CPA's report shall describe the departure, the approximate effects thereof, if practicable, and the reasons why compliance with the principle would result in a misleading statement.

(b) Financial Accounting Standards Board Accounting Standards Codification. The Financial Accounting Standards Board Accounting Standards Codification is incorporated by reference, including subsequent amendments and editions and shall be considered generally accepted accounting principles for the purposes of Paragraph (a) of this Rule. This document may be accessed at <https://asc.fasb.org> at no cost.

*History Note:* Authority G.S. 55B-12; 57D-2-02; 93-12(9); Eff. April 1, 1994;  
Amended Eff. July 1, 2010;  
Readopted Eff. February 1, 2016;  
Amended Eff. September 1, 2023.

**21 NCAC 08N .0211 RESPONSIBILITIES IN TAX PRACTICE**

(a) Standards for Tax Services. A CPA shall not render services in the area of taxation unless the CPA has complied with both the Statements on Standards for Tax Services and the Treasury Department Circular 230 as defined in this Section. In the event that there is a conflict between the Statements on Standards for Tax Services and Treasury Department Circular 230, the CPA shall comply with Treasury Department Circular 230.

(b) Statements on Standards for Tax Services. The Statements on Standards for Tax Services issued by the AICPA are incorporated by reference, including subsequent amendments and editions. This document may be accessed at <https://www.aicpa.org/resources/toolkit/statements-on-standards-for-tax-services> at no cost.

(c) Treasury Department Circular 230. The Treasury Department Circular 230 is incorporated by reference, including subsequent amendments and editions. This document may be accessed at <https://www.irs.gov/pub/irs-pdf/pcir230.pdf> at no cost.

*History Note:* Authority G.S. 55B-12; 57D-2-02; 93-12(9); Eff. April 1, 1994;  
Amended Eff. July 1, 2010; February 1, 2006; April 1, 2003;  
Readopted Eff. February 1 2016;  
Amended Eff. September 1, 2023.

**21 NCAC 08N .0215 INTERNATIONAL FINANCIAL ACCOUNTING STANDARDS**

(a) International Financial Accounting Standards. A CPA shall not express an opinion that financial statements are presented in accordance with international financial accounting standards if such statements contain any departure from an accounting standard that has a material effect on the statements, taken as a whole, unless the CPA can demonstrate that due to unusual circumstances the financial statements would otherwise have been misleading. In such cases, the CPA's report shall describe the departure, the approximate effect thereof if practicable, and the reason why compliance with the standard would result in a misleading statement.

(b) International Financial Accounting Standards consist of the following:

- (1) International Financial Reporting Standards (IFRS) issued after 2003;
- (2) International Accounting Standards (IAS) issued before 2004;
- (3) Interpretations originated from the International Financial Reporting Interpretations Committee (IFRIC) issued after 2003; and
- (4) Standing Interpretations Committee (SIC) issued before 2003.

(c) Copies of Standards. Copies of International Financial Accounting Standards issued by IFRS are incorporated by reference, including subsequent amendments and editions. The documents may be accessed at <https://www.ifrs.org/issued-standards/list-of-standards/> at no cost.

*History Note:* Authority G.S. 55B-12; 57D-2-02; 93-12(9); Eff. February 1, 2011;  
Readopted Eff. February 1, 2016;  
Amended Eff. September 1, 2023.

**21 NCAC 08N .0304 CONSULTING SERVICES STANDARDS**

(a) Standards for Consulting Services. A CPA shall not render consulting services unless the CPA has complied with the Statements on Standards for Consulting Services.

(b) Statements on Standards for Consulting Services. The Statements on Standards for Consulting Services including the definition of such services issued by the AICPA are incorporated by reference, including subsequent amendments and editions. This document may be accessed at <https://www.aicpa.org/resources/download/statement-on-standards-for-consulting-services-no-1> at no cost.

*History Note:* Authority G.S. 55B-12; 57D-2-02; 93-12(9); Eff. April 1, 1994;  
Amended Eff. July 1, 2010; January 1, 2006;  
Readopted Eff. February 1, 2016;  
Amended Eff. September 1, 2023.

**21 NCAC 08N .0305 RETENTION OF CLIENT RECORDS**

(a) A CPA shall return client-provided records in the CPA's custody or control to the client at the client's request. Client-provided records are accounting or other records, including hardcopy and electronic reproductions of such records, belonging to the client that were provided to the CPA by, or on behalf of, the client.

(b) Unless a CPA and the client have agreed to the contrary, when a client makes a request for CPA prepared records or a CPA's work products that are in the CPA's custody or control that have not previously been provided to the client, the CPA shall respond to the client's request as follows:

- (1) The CPA shall provide CPA prepared records relating to a completed and issued work product to the client, except that such records may be

withheld if fees are due to the CPA for that specific work product; and

- (2) The CPA's work products shall be provided to the client, except that such work products may be withheld:
  - (A) if fees are due to the CPA for the specific work product;
  - (B) if the work product is incomplete;
  - (C) if for purpose of complying with professional standards. For example, withholding an audit report due to outstanding audit issues; or
  - (D) if threatened or outstanding litigation exists concerning the engagement or CPA's work.

(c) CPA prepared records are accounting or other records that the CPA was not specifically engaged to prepare and that are not in the client's books and records or are otherwise not available to the client, thus rendering the client's financial information incomplete. Examples include adjusting, closing, combining, or consolidating journal entries including computations supporting such entries and supporting schedules and documents that the CPA proposed or prepared as part of an engagement, an audit being an example. CPA's work products are deliverables set forth in the terms of the engagement, such as tax returns.

(d) Once a CPA has complied with the requirements described in Paragraphs (a) and (b) of this Rule, he or she shall not be under any further ethical obligation to:

- (1) comply with any subsequent requests to again provide records or copies of records described in Paragraphs (a) and (b) of this Rule. If subsequent to complying with a request, a client experiences a loss of records due to a natural disaster, the CPA shall comply with an additional request to provide such records that are in possession of the CPA; and
- (2) retain records for periods that exceed applicable professional standards, state and federal statutes and regulations, and contractual agreements relating to the service performed.

(e) A CPA who has provided records to an individual designated or held out as the client's representative, such as the general partner, or majority shareholder, shall not be obligated to provide such records to other individuals associated with the client. However, in the case of joint individual tax returns, each named taxpayer on that return shall be entitled to a copy of the tax returns and supporting schedules from the CPA.

(f) Work papers shall be the CPA's property, and the CPA is not required to provide such information to the client. However, state and federal statutes and regulations and contractual agreements may impose additional requirements on the CPA.

(g) In fulfilling a request for client provided records, CPA prepared records, or a CPA's work products, the CPA may:

- (1) charge the client a fee for the time and expense incurred to retrieve and copy such records and require that the client pay the fee before the CPA provides the records to the client;
- (2) provide the requested records in any format usable by the client. The CPA is not required to

convert records that are not in electronic format to electronic format. If the client requests records in a specific format and the records are available in such format within the CPA's custody and control, the client's request shall be honored. In addition, the CPA is not required to provide the client with formulas, unless the formulas support the client's underlying accounting or other records or the CPA was engaged to provide such formulas as part of a completed work product. The CPA is not required to provide electronic data files to a client if they were created with tax preparation software owned or licensed by the CPA; and make and retain copies of any records that the CPA returned or provided to the client.

- (3) make and retain copies of any records that the CPA returned or provided to the client.

(h) A CPA who is required to return or provide records to the client shall comply with the client's request as soon as practicable, but no later than 45 days after the request is made.

*History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(9); Eff. April 1, 1994; Amended Eff. January 1, 2006; April 1, 2003; Readopted Eff. February 1, 2016; Amended Eff. September 1, 2023; May 1, 2017.*

**21 NCAC 08N .0307 CPA FIRM NAMES**

(a) Registration of Firm Names. A business may not use a CPA firm name unless that name has been registered with the Board.

(b) Misleading Names Prohibited. A CPA firm shall not trade upon the CPA title through use of any name that is misleading. A misleading CPA firm name is one which:

- (1) Implies the existence of a partnership or registered limited liability partnership or a professional corporation or professional limited liability company if the firm is not, in fact, one of those entities;
- (2) Includes the name of an individual who is not a CPA if the words "certified public accountants" or "CPAs" are included in the firm name;
- (3) Includes information about or indicates an association with persons who are not current or former members of the firm, unless the name is that of a firm network;
- (4) Includes the terms "& Company", "& Associates", or "Group", but the firm does not include, in addition to the named partner, shareholder, owner, or member, at least one other unnamed partner, shareholder, owner, member, or staff employee;
- (5) Contains any representation that would be likely to cause a reasonable person to have a false or unjustified expectation of favorable results or capabilities, including names indicating qualitative superiority or pricing differences;
- (6) Claims or implies the ability to influence a regulatory body or official; or

- (7) Includes the name of an owner whose license has been revoked for disciplinary reasons by the Board, whereby the licensee has been prohibited from practicing public accountancy or prohibited from using the title CPA or holding themselves out as a Certified Public Accountant.

(c) Permissible Firm Names: The following is a non-exhaustive list of types of CPA firm names that are not in and of themselves misleading and are permissible so long as they do not violate other firm name provisions:

- (1) A firm name that includes the names or initials of one or more former or current owners;
- (2) A firm name that excludes the names of one or more former or current owners;
- (3) A firm name that uses the "CPA" title as part of the firm name when all named individuals are owners of the firm who hold the CPA title or are former owners who held the CPA title at the time they ceased to be owners of the firm; or
- (4) A firm name that includes the name of a non-CPA owner if the words "certified public accountant" or "CPA" title are not a part of the firm name.

(d) Any CPA firm registered in another jurisdiction that provides notification of intent to practice pursuant to G.S. 93-10(c)(3) may practice under the name as registered with that jurisdiction.

*History Note:* Authority G.S. 55B-5; 55B-12; 57D-2-02; 93-12(9);  
 Eff. April 1, 1994;  
 Amended Eff. February 1, 2011; January 1, 2006; April 1, 1999;  
 August 1, 1995;  
 Readopted Eff. February 1, 2016;  
 Amended Eff. September 1, 2023.

**21 NCAC 08N .0308 VALUATION SERVICES STANDARDS**

(a) Standards for Valuation Services. A CPA shall not render valuation services of a business, a business ownership interest, security, or intangible asset unless the CPA has complied with the Statements on Standards for Valuation Services.

(b) Statements on Standards for Valuation Services. The Statements on Standards for Valuation Services, including the definition of such services, issued by the AICPA are incorporated by reference, including subsequent amendments and editions. This document may be accessed at <https://www.aicpa.org/resources/download/statement-on-standards-for-valuation-services-vs-section-100> at no cost.

*History Note:* Authority G.S. 55B-12; 57D-2-02; 93-12(9);  
 Eff. January 1, 2006;  
 Amended Eff. July 1, 2010;  
 Readopted Eff. February 1, 2016;  
 Amended Eff. September 1, 2023.

**21 NCAC 08N .0309 PERSONAL FINANCIAL PLANNING SERVICES**

(a) Statement on Standards on Personal Financial Planning Services. A CPA shall not render personal financial planning services unless the CPA has complied with the Statement on Standards on Personal Financial Planning Services.

(b) Statement on Standards on Personal Financial Planning Services. The Statement on Standards on Personal Financial Planning Services, including the definition of such services, issued by the AICPA are incorporated by reference, including subsequent amendments and editions. This document may be accessed at <https://aicpa.org/resources/download/statement-on-standards-in-personal-financial-planning-services> at no cost.

*History Note:* Authority G.S. 55B-12; 57D-2-02; 93-12(9);  
 Eff. February 1, 2016;  
 Amended Eff. September 1, 2023.

**21 NCAC 08N .0403 AUDITING STANDARDS**

(a) Standards for Auditing Services. A CPA shall not render auditing services unless the CPA has complied with the applicable generally accepted auditing standards.

(b) Statements on Auditing Standards. The Statements on Auditing Standards issued by the AICPA are incorporated by reference, including subsequent amendments and editions, and shall be considered generally accepted auditing standards for the purposes of Paragraph (a) of this Rule. This document may be accessed at <https://us.aicpa.org/research/standards/auditattest/clarifiedsas.html> at no cost.

*History Note:* Authority G.S. 55B-12; 57D-2-02; 93-12(9);  
 Eff. April 1, 1994;  
 Amended Eff. July 1, 2010; February 1, 2006;  
 Readopted Eff. February 1, 2016;  
 Amended Eff. September 1, 2023.

**21 NCAC 08N .0404 ACCOUNTING AND REVIEW SERVICES STANDARDS**

(a) Standards for Accounting and Review Services. A CPA shall not render accounting and review services unless the CPA has complied with the standards for accounting and review services.

(b) Statements on Standards for Accounting and Review Services. The Statements on Standards for Accounting and Review Services issued by the AICPA are incorporated by reference, including subsequent amendments and editions, and shall be considered as the standards for accounting and review services for the purposes of Paragraph (a) of this Rule. This document may be accessed at <https://us.aicpa.org/research/standards/compilationreview.html> at no cost.

*History Note:* Authority G.S. 55B-12; 57D-2-02; 93-12(9);  
 Eff. April 1, 1994;  
 Amended Eff. July 1, 2010; February 1, 2006;  
 Readopted Eff. February 1, 2016;  
 Amended Eff. September 1, 2023.

**21 NCAC 08N .0405 GOVERNMENTAL ACCOUNTING STANDARDS**

(a) Standards for Governmental Accounting. A CPA shall not permit the CPA's name to be associated with governmental financial statements for a client unless the CPA has complied with the standards for governmental accounting.

(b) Statements on Governmental Accounting and Financial Reporting Services. The Statements on Governmental Accounting and Financial Reporting Services issued by the GASB are incorporated by reference, including subsequent amendments and editions, and shall be considered as the standards for governmental accounting for the purposes of Paragraph (a) of this Rule. This document may be accessed at <https://www.gasb.org/standards> at no cost.

*History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(9); Eff. April 1, 1999; Amended Eff. July 1, 2010; February 1, 2006; Readopted Eff. February 1, 2016; Amended Eff. September 1, 2023.*

**21 NCAC 08N .0406 ATTESTATION STANDARDS**

(a) Standards for Attestation Services. A CPA shall not render attestation services unless the CPA has complied with the applicable attestation standards.

(b) Statements on Standards for Attestation Engagements. The Statements on Standards for Attestation Engagements issued by the AICPA are incorporated by reference, including subsequent amendments and editions, and shall be considered attestation standards for the purposes of Paragraph (a) of this Rule. This document may be accessed at <https://us.aicpa.org/research/standards/auditattest/ssae> at no cost.

*History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(9); Eff. April 1, 1994; Amended Eff. July 1, 2010; February 1, 2006; Readopted Eff. February 1, 2016; Amended Eff. September 1, 2023.*

**21 NCAC 08N .0409 GOVERNMENT AUDITING STANDARDS**

(a) Standards for Government Audits. A CPA shall not render audit services to a government entity or entity that receives government awards and is required to receive an audit in accordance with Government Auditing Standards unless the CPA has complied with the applicable Generally Accepted Government Auditing Standards.

(b) Government Auditing Standards. The Government Auditing Standards issued by the United States Government Accountability Office are incorporated by reference, including subsequent amendments and editions, and shall be considered Generally Accepted Government Auditing Standards for the purpose of Paragraph (a) of this Rule. This document may be accessed at <https://www.gao.gov/yellowbook> at no cost.

*History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(9); Eff. February 1, 2011; Readopted Eff. February 1, 2016; Amended Eff. September 1, 2023.*

**21 NCAC 08N .0410 INTERNATIONAL STANDARDS ON AUDITING**

(a) International Standards on Auditing. A CPA shall not render auditing services that report to comply with international standards unless the CPA has complied with the applicable international standards on auditing.

(b) Statement on International Standards on Auditing. The Statement on International Standards on Auditing issued by the International Auditing and Assurance Standards Board are incorporated by reference, including subsequent amendments and editions, and shall be considered International Standards on Auditing for the purpose of Paragraph (a) of this Rule. This document may be accessed at <https://www.iaasb.org/standards-pronouncements> at no cost.

*History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(9); Eff. February 1, 2016; Amended Eff. September 1, 2023.*

**21 NCAC 08N .0411 AUDITS SUBJECT TO THE SINGLE AUDIT ACT**

A CPA rendering audit services to a state or local government entity, non-profit organization, or other entity that is subject to the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156, must comply with the Single Audit Act amendments as implemented through Subpart F - Audit Requirements of Title 2 of C.F.R., Chapter II, Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200).

*History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(9); Eff. September 1, 2023.*

**21 NCAC 08N .0412 FORENSIC SERVICES**

(a) Statement on Standards for Forensic Services. A CPA shall not render forensic services unless the CPA has complied with the Statement on Standards for Forensic Services.

(b) Statement on Standards for Forensic Services. The Statement for Forensic Services, including the definition of such services, issued by the AICPA are incorporated by reference, including subsequent amendments and editions. This document may be accessed at <https://www.aicpa.org/resources/download/statement-on-standards-for-forensic-services> at no cost.

*History Note: Authority G.S. 55B-12; 57-D-02); 93-12(9); Eff. September 1, 2023.*

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**CHAPTER 42 – BOARD OF EXAMINERS IN OPTOMETRY**

**21 NCAC 42B .0304 APPLICATION FOR LICENSE RENEWAL**

To apply for license renewal, the licensee shall fully and accurately complete the application that is available through the portal on the Board's website. The application shall be made

available before November 15 of each year preceding the date on which the application and the fees are due.

History Note: Authority G.S. 90-117.5; 90-118.10; Eff. February 1, 1976; Readopted Eff. May 30, 1978; Amended Eff. June 1, 1989; September 30, 1981; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015; Amended Eff. September 1, 2023.

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CHAPTER 46 – BOARD OF PHARMACY

21 NCAC 46 .1616 LIMITED SERVICE PERMITS

(a) The following pharmacy practice locations are eligible to apply for "limited service permits," which are pharmacy locations whose operations are modified by the provisions set forth in Paragraphs (b), (c), and (d) of this Rule:

- (1) auxiliary medication inventories permitted and operating in health care facilities pursuant to Rule .1414(d) of this Chapter;
(2) automated dispensing or drug supply devices permitted and operating in health care facilities pursuant to Rule .1419 of this Chapter;
(3) direct to patient systems that are not located at the home pharmacy's facility pursuant to Rule .1821 of this Chapter;
(4) facilities where drugs are dispensed only by nurse practitioners or physician assistants pursuant to Section .1700 of this Chapter;
(5) county health departments or other governmental entities providing local health services under G.S. 130A-34 where drugs are dispensed only by registered nurses and only pursuant to G.S. 90-85.34A and Section .2400 of this Chapter;
(6) county health departments or other governmental entities providing local health services under G.S. 130A-34 that engage in dispensing beyond that set out in G.S. 90-85.34A and Section .2400 of this Chapter;
(7) free clinics, as defined in G.S. 90-85.44(a)(6); or
(8) critical access hospitals, as defined in G.S. 131E-76.

(b) A pharmacist-manager for a limited service permit may designate one assistant pharmacist-manager but is not required to do so. The assistant pharmacist-manager shall be responsible for exercising all of the responsibilities of a pharmacist-manager when the assistant pharmacist-manager is present and the pharmacist-manager is not present at the location holding the limited service permit. If the pharmacist-manager chooses to designate an assistant pharmacist-manager, the pharmacist-manager shall notify the Board on the limited service permit application, if an assistant pharmacist-manager is desired at that time. If a designation is made or changed after the limited service permit application is filed, the pharmacist-manager shall notify

the Board, in writing, within 15 days of any change in the designation. Notwithstanding the pharmacist-manager's designation of an assistant pharmacist-manager, the pharmacist-manager shall be responsible for ensuring the pharmacy's compliance with all statutes, rules, and standards at all times.

(c) For limited service permits, the pharmacist-manager attendance requirements set out in Rule .2502(b) of this Chapter are modified only as set forth herein:

- (1) For limited service permits described in Subparagraphs (a)(1), (2) and (3) of this Rule, either the pharmacist-manager or the assistant pharmacist-manager shall perform an in-person, on-site visit at least once per calendar quarter to inspect the location holding the permit, review the operations of the location holding the permit with the persons involved in accessing them as permitted by the rules referenced in Subparagraphs (a)(1), (2), and (3) of this Rule, and ensure that the location holding the permit is operated in compliance with all applicable State and federal laws.
(2) For limited service permits described in Subparagraphs (a)(4) and (5) of this Rule, either the pharmacist-manager or the assistant pharmacist-manager shall perform an in-person, on-site visit at least once per week to inspect the location holding the permit, review the operations of the location holding the permit with the persons involved in dispensing, and ensure that the location holding the permit is operated in compliance with all applicable State and federal laws.
(3) For limited service permits described in Subparagraphs (a)(6), (7) and (8) of this Rule, either the pharmacist-manager or the assistant pharmacist-manager employed or otherwise engaged to supply pharmaceutical services may have a flexible schedule of attendance but shall be present for at least one-half of the hours the pharmacy is open or 20 hours a week, whichever is less. For the limited service permits described in Subparagraphs (a)(5) and (6) of this Rule, a licensed pharmacist shall be present when the pharmacy is open as described in Rule .2502(e) of this Chapter. For the limited service permits described in Subparagraph (a)(7) of this Rule, the location holding the limited service permit may operate in the absence of a pharmacist only as set out in Rule .1413 of this Chapter.
(4) The limited service permit holder may name a temporary pharmacist-manager or assistant pharmacist-manager for a period not to exceed 90 days from the departure date of the previous pharmacist-manager or assistant pharmacist-manager. The temporary pharmacist-manager or assistant pharmacist-manager shall accept the responsibilities of that position and shall be present as set forth in this Rule. A location

holding a limited service permit may not operate for a period of more than 30 days without a pharmacist employed or otherwise engaged as a permanent or temporary pharmacist-manager who has signed the permit for that pharmacy.

- (d) A person may serve as the pharmacist-manager or the assistant pharmacist-manager for multiple limited service permits, and may do so while also serving as the pharmacist-manager for a maximum of one permit other than a limited service permit. A person serving multiple limited service permit locations must fulfill all of that person's duties under State and federal law as to each location.
- (e) Except as expressly set forth in this Rule, the pharmacist-manager must provide oversight and supervision as provided elsewhere in this Chapter.

*History Note: Authority G.S. 90-18.1(c); 90-18.2; 90-85.6; 90-85.21; 90-85.32; 90-85.33; 90-85.34; Eff. November 1, 2021; Amended Eff. September 1, 2023.*

**21 NCAC 46 .1821 DIRECT-TO-PATIENT DELIVERY SYSTEMS**

(a) This Rule sets out the requirements under which pharmacies may utilize "direct-to-patient" or ("DTP") delivery systems for dispensing in the State of North Carolina.

(b) Definitions.

- (1) "Direct to patient system" or "DTP system" means any delivery system through which a pharmacy dispenses drugs, devices or medical equipment to a patient through any means other than:
  - (A) in-person dispensing to a patient by pharmacy personnel inside a pharmacy,
  - (B) in-person dispensing by delivery to a patient's residence or to a health care provider treating that patient,
  - (C) shipping through common carrier to a patient or to a health care provider treating that patient, or
  - (D) the use of an automated dispensing device by a health care facility pharmacy that is governed by Rule .1419 of this Chapter.

Except as provided in this Rule or one of the exceptions set out in Parts (A)-(D) of this Subparagraph, no person holding any license or permit from the Board shall participate in any arrangement whereby prescriptions may be left at, picked up from, accepted by, or delivered to any other place. The only DTP systems allowed are "lockers" and "kiosks" as defined herein.
- (2) The "home pharmacy" means the pharmacy responsible for dispensing drugs, devices or medical equipment through a DTP system.
- (3) A "locker" means a secure container in which pharmacy personnel place labeled patient-

specific drugs, devices, or medical equipment to be picked up by the patient.

- (4) A "kiosk" means an automated system that is capable of filling, labeling, and dispensing drugs, devices, or medical equipment to be dispensed to a patient.

(c) Any DTP system located within the State of North Carolina (whether a locker or a kiosk) shall meet the following requirements:

- (1) Before any drugs, devices, or medical equipment may be dispensed from a DTP system, the home pharmacy shall have been issued a pharmacy permit by the Board pursuant to G.S. 90-85.21 or 90-85.21A. In addition, before any drugs, devices, or medical equipment may be dispensed from the DTP system, the DTP system shall hold a limited service permit under Rule .1616 of this Section if it is not located at the home pharmacy's permitted facility.
- (2) The home pharmacy shall notify the Board, in writing, through the home pharmacy's online permit portal, prior to beginning to use any DTP system, including the address and geographical coordinates of the DTP system and the licensed pharmacist(s) responsible for the DTP system. The home pharmacy shall notify the Board prior to moving the DTP system and shall secure a new limited service permit, if one is required by Subparagraph (c)(1) of this Rule, before operating the DTP system in the new location. The home pharmacy shall notify the Board within 10 days after discontinuing patient use of any DTP system.
- (3) A DTP system shall be used exclusively by the home pharmacy.
- (4) Any DTP system shall be 60 miles or fewer from the home pharmacy (via the shortest surface street route).
- (5) A DTP system may be placed in the office of a prescriber only if the DTP system is under the control of the home pharmacy, which is responsible for compliance with all laws regarding the DTP system. The home pharmacy shall maintain the DTP system in the prescriber's office only if the prescriber offers patients a choice of pharmacy. The home pharmacy shall not give compensation to or receive compensation from the prescriber for the placement of the DTP system or for any prescriptions filled by the DTP system.
- (6) The home pharmacy shall prohibit access to the DTP system and its contents by unauthorized personnel and maintain confidentiality of patient information. The DTP system shall be under the continuous supervision of a pharmacist employed by the home pharmacy, which may be satisfied by real-time remote

- supervision of the pharmacy through video and audio connections.
- (7) The DTP system shall display the home pharmacy's name, address, phone number, North Carolina permit number, and the name of the home pharmacy's pharmacist-manager, as well as (where applicable) the limited service permit number for the DTP system and the name of the limited service permit's pharmacist-manager and assistant pharmacist-manager, if any.
  - (8) The home pharmacy shall ensure that there is continuous, recorded video surveillance of the DTP system and any persons using or accessing the DTP system. It shall maintain any recordings for a minimum of 90 days.
  - (9) The home pharmacy shall develop, maintain, and follow a manual of policies and procedures that includes policies and procedures for:
    - (A) Maintaining the security of the DTP system and the drugs, devices, and medical equipment within the DTP system.
    - (B) Determining and applying criteria regarding which drugs, devices, and medical equipment are appropriate for placement in the DTP system and which patients are eligible to use the DTP system.
    - (C) Maintaining any drugs, devices, and medical equipment at temperatures, humidities and other environmental conditions to ensure that they do not become adulterated under G.S. 106-133 and to ensure that they are transported and stored in accordance with manufacturer's specifications, if any, for those items.
    - (D) Removing outdated drugs, devices, and medical equipment from the DTP system as set forth in Subparagraph (c)(11) of this Rule on a regular basis so that patients do not receive drugs, devices, and medical equipment with a beyond use date during the period when the patient is to use the item.
    - (E) Describing the assignment of responsibilities to, and training of, pharmacy personnel regarding the maintenance and filling procedures for the DTP system.
    - (F) Orienting participating patients on use of the DTP system; notifying patients when expected drugs, devices, or medical equipment are not available in the DTP system or when the DTP system is not functioning and notifying them of alternate methods for having those prescriptions filled;
- and ensuring that patient use of the DTP system does not interfere with the delivery of drugs, devices, and medical equipment to patients.
- (G) Inspecting the DTP system during each required inspection.
- This written manual of policies and procedures shall be reviewed and updated annually.
- (10) The home pharmacy shall comply with any federal and state controlled substance laws and rules, including but not limited to registrations that may be required for any DTP systems, before any controlled substances are dispensed from any DTP systems. The home pharmacy shall comply with G.S. 90-106.1 in dispensing any drugs covered by that statute from a DTP system, and shall visually confirm that the person seeking the dispensation is the same as the person on the photographic identification provided.
  - (11) Only pharmacy personnel who are licensed with this Board as pharmacists or registered with this Board as technicians or pharmacy interns may stock drugs, devices, and medical equipment in, or remove drugs, devices, and medical equipment from, the inventory of a DTP system. The home pharmacy shall maintain records of any access to the DTP system by pharmacy personnel stocking or otherwise accessing the DTP system.
  - (12) Before a home pharmacy dispenses drugs, devices and medical equipment to a patient through a DTP system, the home pharmacy shall secure the affirmative consent of the patient to use the DTP system.
  - (13) The dispensing pharmacist on any drugs, devices, or medical equipment dispensed from a DTP system in the State of North Carolina shall be licensed with this Board.
  - (14) Before a prescription is dispensed from the DTP system, the dispensing pharmacist at the home pharmacy shall verify each prescription and shall conduct a drug utilization review and otherwise assure that the drug, device, or medical equipment may safely be dispensed to the patient.
  - (15) The labels of any drugs, devices, and medical equipment dispensed from a DTP system shall be labeled for the individual patient and contain all information required by law, including but not limited to having the dispensing pharmacist identified on the label.
  - (16) The home pharmacy shall create and maintain records of dispensing for any drugs, devices, and medical equipment dispensed in a DTP system in compliance with State and federal law. Any kiosk shall be connected to the home pharmacy's automated data processing system, and any drugs, devices, or medical equipment

dispensed from any locker shall be recorded in the home pharmacy's recordkeeping system. The recordkeeping system shall be capable of producing a record of all drugs, devices, and medical equipment dispensed from the DTP system.

(17) The DTP system shall have a means to identify each patient (or that patient's authorized agent) and release only that patient's prescription drugs, devices, or medical equipment to the patient (or the patient's authorized agent).

(18) The DTP system shall convey the home pharmacy's offer to counsel a patient as required by Rule .2504 of this Chapter and shall provide the ability for the patient to have an immediate real-time consultation with a pharmacist licensed by this Board and employed by the home pharmacy who has access to all of the home pharmacy's information related to the patient. The communication link shall protect the confidentiality of the patient's information. The home pharmacy shall check the communication link at least daily and the DTP system shall be closed if the link malfunctions or if a licensed pharmacist is not available from the home pharmacy for counseling, unless a licensed pharmacist is physically present at the DTP system. A pharmacist who is responsible for counseling may not provide that service for more than three sites simultaneously. In the event that the DTP system is placed in the same physical space as the dispensing area of the home pharmacy, this provision may be satisfied during the time that the pharmacy is open by informing the patient how to receive counseling from a pharmacist in the home pharmacy. If the dispensing pharmacist has determined that the patient should receive counseling before the prescription is dispensed, the DTP system shall provide the ability for the pharmacist to force counseling before the DTP system dispenses the drug, device, or medical equipment.

(19) The home pharmacy shall record and review any incident involving a complaint, delivery error, or omission regarding a DTP as part of the home pharmacy's quality assurance program.

(20) Drugs, devices, or medical equipment that are not picked up by a patient may be returned to stock under the same conditions as if the item had been maintained in the pharmacy, as long as the requirements of this Rule for operating the DTP system have been followed.

(d) With respect to drugs, devices, or medical equipment dispensed through a kiosk, the following additional requirements shall be met:

(1) The dispensing pharmacist shall electronically compare via video link the stock bottle, drug

dispensed, the strength, and the beyond-use date. The dispensing pharmacist shall verify the entire label for accuracy on the video link.

(2) The kiosk shall utilize a barcode system that prints the barcode of the stock bottle or other packaging on the label of the dispensed drug, device, or medical equipment. If the stock bottle or other packaging does not have a barcode, the home pharmacy shall create one. Pharmacy personnel shall scan both the stock bottle or other packaging and the label of the dispensed drug, device, or medical equipment to verify that the item dispensed is the same as the one in the stock bottle or other packaging for each prescription dispensed.

(3) Drugs, devices, or medical equipment dispensed by the kiosk shall be packaged only by a licensed manufacturer or repackager, or prepackaged by the home pharmacy in compliance with the Pharmacy Practice Act and this Chapter.

(4) The home pharmacy shall keep a perpetual inventory of controlled substances that are received and dispensed from each kiosk.

(5) The home pharmacy shall not dispense compounded medications through a kiosk.

(6) The kiosk shall not accept returns of drugs, devices and medical equipment from patients.

(e) This Rule does not alter the method by which patients or providers shall transmit prescriptions to the home pharmacy. Prescriptions may not be collected by the home pharmacy through the DTP system.

*History Note: Authority G.S. 90-85.6; 90-85.15A; 90-85.21; 90-85.32; Eff. September 1, 2023.*

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**CHAPTER 66 - VETERINARY MEDICAL BOARD**

**21 NCAC 66 .0108 FEES**

The following fees established by the Board shall be paid in advance to the Board:

- (1) Veterinary License
  - (a) Issuance or Renewal \$170.00
  - (b) North Carolina License Examination \$250.00
  - (c) Late Renewal Fee \$50.00
  - (d) Reinstatement \$100.00
- (2) Veterinary Technician Registration
  - (a) Issuance or Renewal \$50.00
  - (b) North Carolina Veterinary Technician Examination \$50.00
  - (c) Late Renewal Fee \$50.00
  - (d) Reinstatement \$100.00
- (3) Professional Corporation Certificate of Registration
  - (a) Issuance or Renewal \$160.00

- (b) Late Renewal Fee \$50.00
- (c) Reinstatement \$100.00
- (4) Limited Veterinary License
  - (a) Issuance or Renewal \$170.00
  - (b) Late Renewal Fee \$50.00
  - (c) Reinstatement \$100.00
- (5) Veterinary Faculty Certificate
  - (a) Issuance or Renewal \$170.00
  - (b) Late Renewal Fee \$50.00
  - (c) Reinstatement \$100.00
- (6) Zoo Veterinary Certificate
  - (a) Issuance or Renewal \$170.00
  - (b) Late Renewal Fee \$50.00
  - (c) Reinstatement \$100.00
- (7) Temporary Permit: Issuance \$150.00
- (8) Veterinary Student Intern Registration: Issuance \$25.00
- (9) Veterinary Facility Permit: Issuance or Renewal \$150.00
- (10) Copies of Board publications, rosters, or other materials available for distribution from the Board shall be free or at a minimal cost unless otherwise specifically provided by law. As used herein, "minimal cost" shall mean the actual cost of reproducing the public record or public information.

- (4) prerecorded webinars, audio conferences, and non-interactive on-line presentations by approved continuing education credit providers.
- (4) One continuing education credit hour may be earned for each hour of in-person attendance or live interactive attendance at courses presented by approved continuing education credit providers.
- (5) A live interactive presentation shall:
  - (a) include instant or synchronous two-way communication;
  - (b) provide access to both technical personnel and professional faculty, as well as interactivity among participants for the exchange of questions and answers via instant messaging or a moderated teleconference, and
  - (c) document the level of participation by keeping a record of the participant's activity in asking or answering questions during the presentation and the score of any examination administered at the end or the presentation.
- (6) A veterinarian or registered veterinary technician may request and be granted an extension of time, not to exceed six months, to satisfy the continuing education requirement if the veterinarian or registered veterinary technician provides evidence of a circumstance that prevents the veterinarian or registered veterinary technician from being able to obtain continuing education. The Board shall consider any evidence submitted of a circumstance preventing the veterinarian or registered veterinary technician from being able to obtain continuing education on a case-by-case basis.
- (7) If the Board finds that the circumstance that was the basis for non-compliance with the continuing education requirement justified the non-compliance, the Board may exempt that individual from completing the unearned portion of the continuing education for that renewal period.
- (8) Continuing education credits hours may be earned from courses, programs, or materials presented or approved by the following providers:
  - (a) the American Veterinary Medical Association (AVMA);
  - (b) the American Animal Hospital Association (AAHA);
  - (c) the North Carolina Veterinary Medical Association (NCVMA);
  - (d) the United States Department of Agriculture-Animal and Plant Health Inspection Service;

*History Note: Authority 90-185(6); 90-186(6); 90-187(b); 90-187.5; 132-6.2; Eff. February 1, 1976; Readopted Eff. September 30, 1977; Amended Eff. October 1, 2017; January 1, 2016; January 1, 2015; May 1, 1996; May 1, 1989; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018; Amended Eff. Pending delayed effective date.*

**21 NCAC 66 .0206 MINIMUM STANDARDS FOR CONTINUING EDUCATION**

Each person holding a veterinary license, limited license, a faculty certificate, or a zoo veterinary certificate (collectively referred to herein as "veterinarian") or a veterinary technician registration issued by the Board shall comply with the standards in this Rule. The standards shall be a condition precedent to the renewal of a license, certificate, or registration respectively. The standards are as follows:

- (1) A veterinarian shall earn 20 continuing education credit hours for the calendar year license renewal period. A maximum of five hours may be obtained pursuant to courses described in Item (3) of this Rule.
- (2) A registered veterinary technician shall earn 12 continuing education credit hours for the two-calendar year registration renewal period. A maximum of four hours may be obtained pursuant to course described in Item (3) of this Rule.
- (3) One continuing education hour may be earned for each hour of independent self-study courses,

- (e) the American Association of Veterinary State Boards' (AAVSB) Registry of Approved Continuing Education (RACE); and
- (f) academies, schools, or colleges of veterinary medicine.

These providers are designated herein as "approved continuing education credit providers." The Board shall consider additional courses, presentations, or materials eligible for approval for continuing education credit hours, provided that the individual seeking the credit furnishes the Board with information to establish that the content of the course, presentation, or material are sufficiently educational for veterinarians or registered veterinary technicians. Board approval for continuing education credits for such additional courses, presentations, or materials shall be obtained prior to attendance or participation; however, the Board shall waive the requirement of prior approval if illness, injury, or natural disaster prevented the individual from obtaining the prior approval.

- (9) Each veterinarian and registered veterinary technician shall keep a file containing the three most recent renewal periods of the content of courses submitted to the Board for continuing education credit hours.
- (10) A veterinarian licensed in the year of graduation from a veterinary medical college is not required to earn continuing education credit hours to be eligible for license renewal for the next renewal period.
- (11) A veterinary technician registered in the year of graduation from a veterinary medical technology program is not required to earn continuing education credit hours to be eligible for registration renewal for the next renewal period.
- (12) A veterinarian or veterinary technician serving in the armed forces of the United States and to whom an extension of time to file a tax return is granted pursuant to G.S. 105-249.2 is granted the same extension of time to comply with the continuing education requirement of this Rule.

*History Note: Authority G.S. 90-185(6); 90-186(1); 93B-15; Eff. February 1, 1976; Readopted Eff. September 30, 1977; Amended Eff. June 1, 2003; May 1, 1996; May 1, 1989; January 1, 1987; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018; Amended Eff. February 1, 2018; Amended Eff. Pending legislative review.*

**21 NCAC 66.0901 DEFINITIONS**

In addition to the terms set forth in G.S. 90-181, the following definitions apply to this Subchapter:

- (1) "Owner" means the person whose business provides services that constitute the practice of veterinary medicine as defined by G.S. 90-181(6).
- (2) "Facility" means any physical location, including mobile units, in which the practice of veterinary medicine occurs.
- (3) "Veterinary Facility Permit" means a document authorizing an owner to operate a facility which engages in the practice of veterinary medicine.

*History Note: Authority G.S. 90-185(6); 90-186(8); Eff. Pending delayed effective date.*

**21 NCAC 66.0902 VETERINARY FACILITY PERMITS**

(a) Any person who owns a business which operates a facility providing services that constitute the "practice of veterinary medicine" on a full, part-time, or temporary basis shall have a veterinary facility permit issued by the Board prior to offering or delivering any veterinary medical services to the public. Veterinary or Veterinary Technician teaching programs offering services to the public shall have a veterinary facility permit.

(b) As a condition of any veterinary facility permit issued by the Board, the owner shall designate a supervising veterinarian.

(c) The Board shall issue a veterinary facility permit to an owner after the owner submits an application, pays the veterinary facility permit fee, and passes a facility inspection. The Board shall inspect the veterinary facility to ensure compliance with Rules .0207 and .0208 of this Chapter if an inspection has not been performed in the last two years. It is the responsibility of the owners to ensure that the veterinary facility meets the minimum veterinary facility standards in Rules .0207 and .0208 of this Chapter.

(d) The application for a veterinary facility permit shall be on a form prescribed by the Board and available on the Board's website. The application shall contain:

- (1) the owner's name, physical address, mailing address, email address, and telephone number;
- (2) proposed or existing name of the facility, as set forth in G.S. 90-181.1, physical address, mailing address, email address, and telephone number; and
- (3) designation of a supervising veterinarian of the facility subject to the provisions of Rules .0903 of this Section.

(e) Each veterinary facility permit shall be renewed yearly. The veterinary facility must have passed an inspection pursuant to Rule .0207(b)(16) of this Chapter within the 24 months prior to issuance of renewal.

(f) Each veterinary facility that is identified by a separate physical address or that is located at the same physical address as another veterinary facility but has different owners or supervising veterinarians shall be a separate veterinary facility requiring a separate veterinary facility permit. The physical address for a veterinary facility shall be the primary business location.

- (g) The owner shall notify the Board within 10 business days of any changes in contact information.
- (h) The owner shall notify the Board in writing of a planned change in the ownership or in the supervising veterinarian of the veterinary facility at least 20 business days prior to the planned change.
- (i) In the event of an owner's inability to maintain the facility's compliance with Chapter 90 of the General Statutes and the rules of this Chapter, the Board shall be notified within 10 business days by an owner, or if the owner is unable to do so as a result of physical inability, the supervising veterinarian, or a member of the veterinary facility's staff.
- (j) In the event that the Board is notified that the owner to whom a facility permit is issued is dissolved voluntarily, administratively, or by operation of law; suspended by the NC Department of Revenue; or has its certificate of authority revoked by the NC Secretary of State, the Board shall also suspend the permit issued to the owner. The suspension shall remain in effect until the suspension has been lifted by NC Department of Revenue, or the person has been reinstated by the NC Secretary of State, or both.
- (k) The Board may issue a temporary veterinary facility permit to the owners of a veterinary facility for a period of 35 business days to allow the owners to address and resolve violations of the rules of this Chapter, particularly, Rules .0207 and .0208 of this Chapter, discovered during the veterinary facility inspection. However, the Board shall not issue a temporary veterinary facility permit if the violations present a danger to the health or safety of the public or animals. Upon request of the owner, the Board may extend a temporary permit for an additional period of no more than 35 business days, as long as satisfactory progress has been made as determined by the Board. In the event of the death of an owner, the permit remains valid for 35 business days from the date of the death of the owner, so long as the facility continues to have an active, supervising veterinarian registered with the Board.
- (l) The following are exempt from the requirement for a veterinary facility permit:
- (1) those exempted by licensure under G.S. 90-187.10;
  - (2) a veterinary facility owned and operated by the State of North Carolina, a political subdivision thereof, or the federal government, so long as the facility does not offer or provide veterinary services to the public; or
  - (3) a temporary veterinary facility established as a result of an emergency declared by the Governor of North Carolina.
- (m) A person operating without a veterinary facility permit is subject to the provisions of G.S. 90-187.13.
- (n) The veterinary facility permit shall be displayed by the owners at the facility at a location viewable by the public. Veterinary facility permits for mobile facilities shall be available upon request.
- (o) An owner or supervising veterinarian shall provide a copy of medical records maintained pursuant to Rule .0207 of this Chapter within 10 business days of receipt of a request by a current or former patient's owner. The veterinary facility may charge the patient's owner the actual cost of reproducing the records as a reasonable fee.

- (p) Owners shall post on any existing veterinary facility website home page:
- (1) The facility's name, address, and telephone number,
  - (2) The facility's regular business hours.
  - (3) Availability of after-hours emergency care at the facility; and
  - (4) If after-hours emergency care is not available, the name, address, and telephone number of an after-hours emergency provider.

*History Note:* Authority G.S. 90-185; 90-186(2); 90-186(8); 90-186(9);  
*Eff. Pending legislative review.*

**21 NCAC 66 .0903 SUPERVISING VETERINARIAN**

- (a) The owners of a veterinary facility shall designate a supervising veterinarian who shall be responsible for informing the owners as to the instances of non-compliance with 21 NCAC 66 .0207 and 21 NCAC 66 .0208 at the veterinary facility.
- (b) The supervising veterinarian shall be currently licensed by and in good standing with the Board.
- (c) The owners may designate an interim supervising veterinarian to serve for a period not to exceed 25 business days.
- (d) A veterinarian may be a supervising veterinarian at more than one veterinary facility. At each veterinary facility that is open for 159 hours or less per month, the supervising veterinarian shall be physically onsite for a minimum of 25 percent of the total time a veterinary facility is open. At each veterinary facility that is open for 160 hours or more per month, the supervising veterinarian shall be physically onsite at each veterinary facility for a minimum of 40 hours per month. Electronic or handwritten documentation stating the dates and times that the supervising veterinarian was present at the veterinary facility shall be maintained by the supervising veterinarian at each individual facility and made available by the owner, supervising veterinarian, or the staff at each facility at the time of inspection or investigation by the Board.
- (e) The owners of a veterinary facility may designate more than one supervising veterinarian for a veterinary facility, in which case the onsite physical presence of each of the supervising veterinarians at the veterinary facility shall be counted toward satisfaction of the onsite physical presence requirement of Paragraph (d) of this Rule.

*History Note:* Authority G.S. 90-185(6); 90-186(9);  
*Eff. Pending legislative review.*

**21 NCAC 66 .0904 DISCIPLINE VETERINARY FACILITY PERMITS**

- (a) The Board shall investigate any complaint within its jurisdiction. The investigation and any resulting hearings shall be conducted pursuant to Sections .0600 and .0700 of the Chapter. Following an investigation and the owner's opportunity to be heard, the Board may:
- (1) revoke or suspend a veterinary facility permit issued under this Chapter;
  - (2) discipline the owner of a facility permitted under this Chapter in accordance with the

disciplinary measures set forth in Sections .0600 and .0700 of this Chapter;

- (3) deny a veterinary facility permit required by G.S. 90-186(8) and the rules of this Chapter based on violations of Board Rules including but not limited to Rules .0207 and .0208 of this Chapter.

For the purpose of this Rule, references to licensee or registrant in the provisions of Sections .0600 and .0700 of this Chapter are treated as references to owner and permittee. References to license are treated as references to facility permit.

(b) The Board may suspend, revoke, or deny issuance of a veterinary facility permit, without hearing, if:

- (1) A veterinary facility has not had a supervising veterinarian or an interim supervising veterinarian serving in that capacity for more than five business days.
- (2) The Board obtains a summary emergency order pursuant to the provisions of G.S. 90-186(3).
- (3) The owners of the veterinary facility have failed to notify the Board after 10 business days of a change in ownership of the facility or change in the supervising veterinarian.

(c) An owner shall cease to operate a veterinary facility as of the date the Board notifies the owner of the revocation of his or her veterinary facility permit. Within 24 hours of receiving notification of revocation, an owner shall display the following information at the facility and through any existing medium of communication with the public, such as social media, a telephone answering system, or facility website:

- (1) information that the veterinary facility is closed;
- (2) the means by which clients may obtain their animal's medical records; and
- (3) notice of the Board's revocation of the facility permit.

*History Note: Authority G.S. 90-185(6); 90-186(8); 90-186(9); Eff. Pending legislative review.*

**21 NCAC 66 .0905 REINSTATEMENT AFTER REVOCATION OF FACILITY PERMIT**

Any person whose facility permit been suspended or revoked pursuant to the provisions of Rule .0904 of this Section may apply for reinstatement subject to any terms and conditions contained in the final agency decision issued by the Board upon revoking or suspending the person's facility permit. The Board may conduct an inspection prior to reinstatement to determine if the terms and conditions stated in the final agency decision have been addressed.

*History Note: Authority G.S. 90-185(6); 90-186(8); 90-186(9); Eff. Pending delayed effective date.*

**TITLE 26 - OFFICE OF ADMINISTRATIVE HEARINGS**

**26 NCAC 03 .0106 CONSENT ORDER: SETTLEMENT: STIPULATION**

(a) Informal disposition may be made of a contested case or an issue in a contested case by stipulation, agreement, or consent order at any time during the proceedings. Parties may enter into such agreements on their own or may ask for a settlement conference with an administrative law judge to promote consensual disposition of the case.

(b) If an agency enters into a settlement agreement after the commencement of a contested case, the agency shall file a copy of the settlement agreement with OAH. The settlement agreement shall be included in the official record of the contested case consistent with G.S. 132-1.3.

*History Note: Authority G.S. 7A-750; 7A-751; 150B-31(b); 150B-37; Eff. August 1, 1986; Amended Eff. November 1, 1987; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016; Amended Eff. September 1, 2023.*

**26 NCAC 03 .0401 MEDICAID HEARING PROCEDURES RULES**

(a) The rules in 26 NCAC 03 .0100 apply to contested Medicaid cases commenced by Medicaid applicants or recipients under S.L. 2008-107, s. 10.15A.(h1) as rewritten by S.L. 2008-118, s. 3.13 except:

- (1) 26 NCAC 03 .0101(b);
- (2) 26 NCAC 03 .0102(a)(3), (b) – (e);
- (3) 26 NCAC 03 .0103(a);
- (4) 26 NCAC 03 .0104;
- (5) 26 NCAC 03 .0106(b);
- (6) 26 NCAC 03 .0107;
- (7) 26 NCAC 03 .0108;
- (8) 26 NCAC 03 .0112;
- (9) 26 NCAC 03 .0115;
- (10) 26 NCAC 03 .0117;
- (11) 26 NCAC 03 .0118;
- (12) 26 NCAC 03 .0120(e);
- (13) 26 NCAC 03 .0123;
- (14) 26 NCAC 03 .0125; and
- (15) 26 NCAC 03 .0127(a).

(b) Nothing in this Rule affects discretionary powers granted to an administrative law judge as set out in G.S. 150B-33(b).

*History Note: Authority G.S. 7A-751(a); S.L. 2008-107, s. 10.15A.(h1) as rewritten by S.L. 2008-118, s. 3.13; Temporary Adoption Eff. December 2, 2008; Eff. August 1, 2009; Amended Eff. April 1, 2014; November 1, 2012; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016; Amended Eff. September 1, 2023; October 1, 2022.*

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**RULES REVIEW COMMISSION**

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*This Section contains information for the meeting of the Rules Review Commission October 19, 2023 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 984-236-1850. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2<sup>nd</sup> business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.*

**RULES REVIEW COMMISSION MEMBERS**

**Appointed by Senate**

Jeanette Doran (Chair)  
Jay R. Hemphill  
Jeff Hyde  
Brandon Leebrick  
Bill Nelson

**Appointed by House**

Barbara A. Jackson (1<sup>st</sup> Vice Chair)  
Randy Overton (2<sup>nd</sup> Vice Chair)  
Wayne R. Boyles, III  
Jake Parker  
Paul Powell

**COMMISSION COUNSEL**

Brian Liebman	984-236-1948
Lawrence Duke	984-236-1938
William W. Peaslee	984-236-1939
Seth M. Ascher	984-236-1934

**RULES REVIEW COMMISSION MEETING DATES**

October 19, 2023	December 14, 2023
November 16, 2023	January 18, 2024

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**AGENDA**

**RULES REVIEW COMMISSION**

**Thursday, October 19, 2023, 9:00 A.M.**

**1711 New Hope Church Rd., Raleigh, NC 27609**

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Oath of Office for Commissioners
- III. Approval of the minutes from the last meeting
- IV. Follow-up matters
  - A. Board of Agriculture - 02 NCAC 52B .0214; 52J .0901, .0902, .0903, .0904 (Liebman)
  - B. Medical Care Commission - 10A NCAC 13F .0702, .1307; 13G .0705, .1301 (Liebman)
  - C. Department of Justice - 12 NCAC 02J .0201 (Liebman)
  - D. Criminal Justice Education and Training Standards Commission - 12 NCAC 09B .0209, .0403, .0501, .0502; 09C .0306; 09G .0405, .0406 (Liebman)
  - E. Sheriffs' Education and Training Standards Commission - 12 NCAC 10B .0604, .0605, .0606, .0607, .0704, .0714 (Peaslee)
  - F. Private Protective Services Board -14B NCAC 16 .0201, .0205, .0403, .0807, .1101, .1501, .1502, .1601, .1701, .1706, 1707 (Liebman)
  - G. Environmental Management Commission 15A NCAC 02D .0503, .0506, .0532, .0614, .0918, .0926, .0927, .0928, .0932, .0960, .0961, .0964, .1403, .1708; 02Q .0102, .0706 (Liebman)
  - H. Environmental Management Commission - 15A NCAC 02H .1301, .1401, .1402, .1403, .1404, .1405 (Liebman)
  - I. Marine Fisheries Commission - 15A NCAC 03M .0101 (Duke)
  - J. Coastal Resources Commission - 15A NCAC 07H .0208, .0308; 07M .0603 (Liebman)
  - K. Coastal Resources Commission - 15A NCAC 07H .0501, .0502, .0503, .0505, .0506, .0507, .0508, .0509, .0510; 07I .0406, .0506, .0702; 07J .0203, .0204, .0206, .0207, .0208, .0312 (Liebman)
  - L. Coastal Resources Commission - 15A NCAC 07H .2305 (Duke)
  - M. Coastal Resources Commission - 15A NCAC 07M .0201, .0202, .0401, .0402, .0403, .0701, .0703, .0704, .1001, .1002, .1101 (Peaslee)
  - N. Department of Revenue - 17 NCAC 07B .0104, .0106, .0108, .0112, .0115, .0117, .0121, .0801, .0901, .0902, .0904, .1101, .1123, .1202, .1301, .1302, .1303, .1305, .1404, .1601, .1602, .1605, .1701, .1702,

- .1704, .1705, .1801, .1905, .1907, .2001, .2002, .2101, .2102, .2105, .2201, .2204, .2205, .2209, .2210, .2212, .2213, .2301, .2401, .2603, .2604, .2605, .2701, .2702, .2801, .2802, .2901, .3004, .3009, .3101, .3106, .3107, .3301, .3302, .3801, .3804, .3907, .3910, .4102, .4105, .4106 and .4109 (Ascher)
- O. Department of Revenue - 17 NCAC 07B .4201, .4202, .4203, .4204, .4205, .4206, .4210, .4301, .4302, .4401, .4403, .4404, .4406, .4411, .4413, .4415, .4503, .4510, .4609, .4614, .4701, .4707, .4708, .4716, .4801, .4802, .4803, .5001, .5002, .5004 (Peaslee)
- V. Review of Filings (Permanent Rules) for rules filed between August 21, 2023 through September 20, 2023
  - 1. Sheriffs' Education and Training Standards Commission (Peaslee)
  - 2. Wildlife Resources Commission (Ascher)
  - 3. State Board of Education (Ascher)
  - 4. Board of Examiners in Optometry (Peaslee)
- VI. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days prior to the RRC Meeting
- VII. Existing Rules Review
- VIII. Commission Business
  - o Next meeting: November 16, 2023

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**Commission Review**  
**Log of Permanent Rule Filings**  
**August 21, 2023 through September 20, 2023**

**SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION**

The rules in Subchapter 10B govern the commission organization and procedure (.0100); enforcement rules (.0200); minimum standards for employment as a justice officer (deputy or jailer) (.0300); certification of justice officers (.0400); standards and accreditation for justice officers schools, training programs, and the instructors (.0500-.0900); certificate and awards programs for sheriffs, deputies, justice officers, jailers, reserve officers, and telecommunicators (.1000-.1700); in-service training (.2000); firearms in-service training and re-qualification (.2100); and forms (.2200).

Certification Forms 12 NCAC 10B .2201  
Amend\*

**WILDLIFE RESOURCES COMMISSION**

The rules in Subchapter 10A cover general WRC practices and procedures including petitions for rulemaking (.0400); declaratory rulemaking (.0500); warning tickets (.1000); waivers (.1100); emergency powers (.1200); wildlife poacher reward fund (.1300); interstate wildlife violator compact (wcv) (.1400); and evidence (.1500).

Form and Contents of Petition 15A NCAC 10A .0401  
Readopt without Changes\*

Action on Petition 15A NCAC 10A .0402  
Readopt without Changes\*

Waiver 15A NCAC 10A .1101  
Readopt/Repeal\*

Emergency Powers 15A NCAC 10A .1201  
Readopt with Changes\*

**EDUCATION, STATE BOARD OF**

The rules in Subchapter 6G relate to education agency relations including rules about the school-based management and accountability program (.0300) charter schools (.0500); and remote academies (.0600).

Remote Academies Hardware and Software Fees 16 NCAC 06G .0601  
Adopt\*

**OPTOMETRY, BOARD OF EXAMINERS IN**

The rules in Subchapter 42B concern license to practice optometry including license by examination (.0100); responsibility to supply information (.0200); and professional corporations and limited liability companies (.0300).

Beginning Practice; Relocating Practice  
Amend\*

21 NCAC 42B .0201

The rules in Subchapter 42D concern optometric assistants and technicians.

Paraoptometric Personnel  
Amend\*

21 NCAC 42D .0102